



California Regulatory Notice Register

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APRIL 8, 2005

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

MULTI-COUNTY:

Western Municipal Water District Feather River Air Quality Management District

A written comment period has been established commencing on **April 8, 2005** and closing on **May 23, 2005**. Written comments should be directed to the Fair Political Practices Commission, Attention Cynthia A. Jones, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the

proposed conflict of interest code(s). Any written comments must be received no later than **May 23, 2005**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Cynthia A. Jones, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Cynthia A. Jones, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Section 83112 of the Government Code and 2 Cal. Code of Regs., Section 18312, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. A public hearing on the proposed regulation will be held on or after **May 12, 2005**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California 95814, commencing at approximately **9:30 a.m.** Written comments to be submitted to the Commission prior to the hearing must be received no later than **5:00 p.m. on May 10, 2005**, at the Commission offices.

BACKGROUND/OVERVIEW

Conflict of Interest: Generally, under the Political Reform Act, public officials are prohibited from participating in governmental decisions that may have a material financial effect on his or her economic interests. A public official's economic interests are defined as follows:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more, or, in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(a) and (d); Regulation 18703.1);
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b); Regulation 18703.2);
- A public official has an economic interest in any source of income which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$360 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family this is known as the "personal financial effects" rule (Section 87103; Regulation 18703.5).

For purposes of what constitutes a "source of income" under section 87103(c), government salary is expressly excluded. (Section 82030(b)(2).) However, a financial effect on the actual amount of governmental salary an official or a member of his or her immediate family receives may still be disqualifying as a material effect on "personal finances." Regulation 18705.5 provides that financial effects on the amount of

government salary the official or his or her immediate family receives does not give rise to a conflict of interest unless the decision has a unique personal financial effect on the official or his or her spouse. According to regulation 18705.5, which establishes the materiality standard for personal financial effects, the financial effects of a public official's decision are not material, and thus are not disqualifying interests, unless the decision is to hire, fire, promote, demote, suspend without pay, take other disciplinary action with financial sanction, or set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.

Staff has identified two issues that are not addressed by the regulation:

1. The regulation permits public officials to participate in decisions to set a salary for a member of their immediate family, if the member of his or her immediate family is the only person in a job classification or position.
2. The regulation refers to hiring and firing, but not appointments, by the public official.

To remedy this situation, staff proposes amendments to regulation 18705.5 to declare material the financial effect of a decision by a public official that has a "unique" financial effect on a member of the official's immediate family; and to include "appointments" as decisions which could have material financial effects on the public official or a member of his or her immediate family.

Commission staff will also investigate to what extent a public official's choice not to act in situations where a promotion will automatically result for an immediate family member may also be disqualifying.

DISCUSSION OF PROPOSED REGULATORY ACTION

Regulation 18705.5(b): Staff proposes two amendments to this regulation.

Amend Regulation 18705.5(b): Regulation 18705.5 is amended to include a decision to "appoint" as a decision that could be deemed material to have material financial effects on a public official or a member of his or her immediate family.

The regulation is also amended to state that a public official cannot set a salary for a member of his or her immediate family when the family member is the only person in the job classification or position.

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Effect on State Government. This regulation will have no fiscal impact on any state agency or program.

Fiscal Effect on Federal Funding of State Programs.
This regulation will have no fiscal impact on any federally funded state program or agency.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret and make specific Government Code sections as follows:

Regulation 18705.5: sections 87100, 87102.5, 87102.6, 87102.8 and 87103.

CONTACT

Any inquiries concerning the proposals should be made to John W. Wallace, Fair Political Practices Commission, 428 J Street, Eighth Floor, Sacramento, California 95814, telephone (916) 322-5660. Proposed regulatory language can be accessed at www.fppc.ca.gov.

ADDITIONAL COMMENTS

After the hearing, the Fair Political Practices Commission may adopt the proposed regulation if it remains substantially the same as described or as in the text originally made available to the public. The Fair Political Practices Commission may make changes to the proposed regulation before its adoption.

TITLE 4. CALIFORNIA HORSE RACING BOARD

DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1663 ENTRY OF CLAIMED HORSE

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1663, Entry of Claimed Horse, to provide that a horse claimed in a California claiming race is ineligible to race in any State other than California until 60 days after the close of the meeting from where it was claimed except in a stakes race.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2005**, or as soon after that as business before the Board will permit, at the

Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on May 23, 2005**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6042
E-mail: HaroldA@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19440, Business and Professions (B&P) Code. Reference: Section 19562, B&P Code.

B&P Code Sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19562, B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19420 provides that jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. B&P Code Section 19440 states the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to: Licensing of each racing association and all persons, other than the public at large, who participate in a horse racing meeting with pari-mutuel wagering. B&P Code Section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State.

The Board proposes to amend Rule 1663 to make horses claimed out of a claiming race in California ineligible to race in any State other than California until 60 days after the close of the meeting at which it

was claimed except in a stakes race. In addition, the proposed amendment would include standardbred horses in the 60-day prohibition while maintaining the breed's exemption from the remaining provisions of the Rule. The California horse racing industry has asked the Board to amend Rule 1663 to prevent horses claimed in California claiming races from being raced out of state until 60 days after the close of the meeting at which they were claimed. The number of horses claimed in California has steadily increased over time. Between fiscal year 1996–1997 and fiscal year 2003–2004, the number of California horses claimed rose from 2,440 to 3,397. The industry maintains many of these horses are shipped out of state, with the effect of lowering the in-state stock of horses. The depletion of eligible race horses in California means fewer starters and short fields. This causes California's horse racing product to be less attractive to the wagering public. Between 1997 and 2003, on-track attendance at horse racing events in California dropped by over 1.6 million fans. The proposal to make horses claimed in California ineligible to race in another jurisdiction until 60 days after the meeting in which it was claimed is not unique. Several horse racing jurisdictions have such regulations, and all United States horse racing jurisdictions honor them on a reciprocal basis. If a horse claimed in another jurisdiction is shipped to California and there are questions regarding its eligibility to race, the jurisdiction from which it was claimed is contacted to make a determination. The harness industry was previously exempt from the provisions of Rule 1663. However, harness meetings are also experiencing a shortage of horses, so the industry requested that a standardbred claimed in California be prohibited from running in another state until 60 days after the meeting in which it was claimed.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1663 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts

that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1663 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1663 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610. Rule 1663 states the conditions under which a horse claimed out of a claiming race may start in a subsequent race, be run back in a claiming race or run out of state. The regulation also provides the conditions under which a claimed horse may be removed from the grounds of the racing association where it was claimed.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: HaroldA@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Pat Noble, Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL
STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

**TITLE 4. CALIFORNIA
HORSE RACING BOARD**

DIVISION 4, CALIFORNIA CODE
OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND
RULE 1976.9. PICK (N) POOL

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1976.9, Pick (n) Pool, a pari-mutuel wagering rule. The proposed amendment provides that if the condition of the turf course warrants a change of racing surface in a race that is included in a Pick (n), and the public was not informed before the close of wagering on the Pick (n), the race will be declared as no contest by the stewards for the purposes of the Pick (n) Pool. The proposed amendment will also permit the totalizator to provide information pertaining to possible Pick (n) payouts for each of the runners when the last race comprising the Pick (n) is the only race remaining to be run. All references to a single price pool were changed to a win pool. The change is for consistency with other pari-mutuel wagers and does not change any provision of the rule.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2005**, or as soon after that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENTS

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on May 23, 2005**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Pat Noble, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
Fax: (916) 263-6042
E-mail: PatN@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440 and 19590, Business and Professions (B&P) Code. Reference: 19440, 19590 and 19593, B&P Code.

B&P Code Sections 19440 and 19590 give the Board jurisdiction and supervision over meetings in California where horse races with wagering on their results are held and authorize the Board to adopt, amend or repeal regulations.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Business and Professions Code Section 19440 states that the Board shall have all powers necessary and proper to enable it to adopt rules and regulations for the protection of the public and the control of horse racing. B&P Code Section 19590 provides that the Board shall adopt rules governing, permitting, and regulating pari-mutuel wagering on horse races under the system known as the pari-mutuel method of wagering. B&P Code Section 19593 states no method of betting, pool making, or wagering other than by the pari-mutuel method shall be permitted or used by any person licensed under this chapter to conduct a horse racing meeting.

Rule 1976.9, Pick (n) Pool, is a pari-mutuel wager that requires the selection of the first-place finisher in each race included in the Pick (n). The minimum number of races required for a Pick (n) is four and the maximum number allowed is ten. At the time an association files their application for license to conduct a horse racing meeting they designate the pari-mutuel wagers they will offer during their race meeting. If Rule 1976.9 is designated the association also designates the number of races that will comprise the Pick (n). Rule 1976.9 prohibits the totalizator from providing any information that covers combinations, amounts wagered on specific combinations, number of tickets sold, or the number of live ticks remaining. The only information that can be provided under the rule is the total amount of the net pool at the close of Pick (n) wagering. The Board proposes to amend the rule to permit the totalizator to provide information pertaining to possible Pick (n) payouts for each of the runners when the last race of the Pick (n) is the only race remaining to be run.

The Board also proposes to add a provision to address changes in racing surfaces. If the condition of the turf course warrants a change of racing surface in a race that is included in the Pick (n) and the change was not announced to the public before the close of wagering on the Pick (n) Pool, the stewards will declare that race as no contest for the purposes of the Pick (n) Pool and the calculation of the pool will be pursuant to subsection (b) of Rule 1976.9.

DISCLOSURE REGARDING THE
PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1976.9 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1976.9 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1976.9 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed action during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Pat Noble, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
E-mail: PatN@chr.ca.gov

If the person named above is not available, interested parties may contact:

Harold Coburn, Regulation Analyst
Telephone: (916) 263-6397

Jacqueline Wagner, Manager
Policy and Regulations
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Pat Noble, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Pat Noble at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Pat Noble at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING LOW COST AUTOMOBILE INSURANCE RATES

RH05042665

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi will hold a public hearing to consider rates for the California Low Cost Automobile Insurance Program.

Currently, the annual premiums for the California Low Cost Automobile Insurance pilot programs are \$347 per vehicle for Los Angeles County and \$314 for the City and County of San Francisco. A 25 percent surcharge is added to the base rate for unmarried male drivers ages 19 through 24 years of age. Annual premiums for optional uninsured motorists coverage are currently \$64 and \$39 for Los Angeles County and the City and County of San Francisco, respectively. For optional medical payments coverage, premiums are currently \$26 for Los Angeles County and \$24 for the City and County of San Francisco.

The California Automobile Assigned Risk Plan ("CAARP") has filed a rate application to increase the rates to \$408 for Los Angeles County and \$369 for the City and County of San Francisco. CAARP also proposes to maintain the current 25 percent surcharge for certain drivers. In addition, CAARP has proposed to increase rates for uninsured motorists coverage to \$79 in Los Angeles County and \$48 in San Francisco City and County, and to increase rates for medical payments coverage to \$46 for Los Angeles County and \$42 for the City and County of San Francisco. The Commissioner will consider CAARP's rate proposal and invites other comments from the public. Premium rates are specified in the program's Plan of Operations, approved by the Commissioner. California Code of Regulations, Title 10, Chapter 5, Section 2498.6 references this plan.

AUTHORITY TO ADOPT RATES AND REFERENCE

The Insurance Commissioner will consider the proposed rates pursuant to the authority vested in him by California Insurance Code Sections 11620, 11624, 11629.72 and 11629.92. Premium rates, referenced in Section 27 of the Plan of Operations, are set forth in Insurance Code Sections 11629.72 and 11629.92, and amended by 2002 Stats., chapter 742, and subsequent decisions of the Commissioner. Government Code Section 11343(a) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed rates at the following date, time, and place:

Date and Time: May 31, 2005

10:00 a.m.

**Location: 45 Fremont Street
22nd Floor Hearing Room
San Francisco, California 94105**

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS:

AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed rates prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mary Ann Shulman, Senior Staff Counsel
California Department of Insurance
Legal Division
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Shulmanm@insurance.ca.gov
Telephone: (415) 538-4133
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
MohrE@insurance.ca.gov
Telephone: (415) 538-4112
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on May 31, 2005**. Any written materials received after that time will not be considered. Written

comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST

California Insurance Code Sections 11629.7 through 11629.999 establish, within the California Automobile Assigned Risk Plan (CAARP), established under Section 11620 of the Insurance Code, low-cost automobile insurance pilot programs for the County of Los Angeles and the City and County of San Francisco.

Because the pilot programs are established and administered through CAARP, CAARP procedures are applied where appropriate and not inconsistent with the low cost automobile insurance statutes. Insurance Code Sections 11620 and 11624 require the Commissioner to hold a public hearing before amending assigned risk plan rates.

Sections 11629.7 and 11629.9 of the Insurance Code require that, after a public hearing, the Commissioner shall approve or issue a reasonable plan for the equitable apportionment, among insurers, of eligible consumers. The plan also contains rules and rates. This plan, approved by the Commissioner, is referenced in Title 10, Section 2498.6 of the California Code of Regulations.

Under the pilot programs, the low-cost auto policy satisfies the financial responsibility laws and provides coverage of \$10,000 for liability for bodily injury or death to one person, subject to a cumulative limit of \$20,000 for all persons in one accident, and \$3,000 for liability for damage to property. In addition to eligibility and other requirements, the statute sets forth

the initial annual premium rates. In certain cases, surcharges are added to the base rate. The statute also provides procedures for adjusting the rates.

In 2002, low cost automobile program legislation reduced initial premium rates set forth in sections 11629.72 and 11629.92 of the Insurance Code to \$347 for Los Angeles County and \$314 for the City and County of San Francisco. In addition, the legislation established the availability of optional coverages of uninsured motorists and medical payments, at additional charge, through the program. The Commissioner established rates for uninsured motorists coverage of \$64 and \$39 for Los Angeles and San Francisco counties, respectively, and rates for medical payments coverage of \$26 and \$24 for Los Angeles and the City and County of San Francisco, respectively. In 2004, CAARP recommended no change to these rates. Following a public hearing, the Commissioner determined to adopt CAARP's rate recommendation to maintain these rates and surcharge.

Insurance Code Sections 11629.72(c) and 11629.92(c) provide that, annually, CAARP shall submit to the Commissioner a proposed rate and surcharge for approval. Accordingly, CAARP has submitted a proposal. CAARP proposes to increase the rates to \$408 for Los Angeles County and \$369 for the City and County of San Francisco. CAARP further proposes to maintain the 25 percent surcharge rate. In addition, CAARP proposes to increase rates for uninsured motorist coverage to \$79 for Los Angeles and \$48 for San Francisco counties and to increase rates for medical payments coverage to \$46 and \$42, respectively, for Los Angeles County and San Francisco City and County. Further details appear in the application on file with the Commissioner, which is available for review as set forth below.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES / SCHOOL DISTRICTS / FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in

other nondiscretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

Because the proposal involves rates for private passenger automobiles, the Insurance Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The agency invites interested persons to present statements or arguments with respect to the proposed rate, or other alternatives, at the scheduled hearing or during the written comment period.

PLAIN ENGLISH

The rate application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL STATEMENT
OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the rate proposal, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to a contact person listed above. Further details of CAARP's rate application are on file with the Commissioner and available for review as set forth below.

QUESTIONS REGARDING REGULATIONS /
ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about the proposed rate application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont, 21st Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

ACCESS TO CAARP'S RATE APPLICATION

Any interested person may inspect a copy of the proposed rate application. **By prior appointment**, CAARP's rate application is available for inspection at the public viewing rooms at 45 Fremont Street, 22nd Floor, San Francisco, California 94105 by calling 415/538-4300, and at the Ronald Reagan State Building, 300 South Spring Street, Los Angeles, CA 90013 by calling 213/346-6707 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

FINAL STATEMENT OF REASONS

Once prepared, the Final Statement of Reasons will be made available through the contact persons listed above.

AVAILABILITY OF MODIFIED TEXT

With the exception of nonsubstantive or grammatical changes, if the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

The Initial Statement of Reasons and this Notice of Proposed Action will be published online

and may be accessed through the Department's website at www.insurance.ca.gov.

**TITLE 10. DEPARTMENT
OF INSURANCE**

NOTICE OF PROPOSED ACTION
AND NOTICE OF PUBLIC HEARING

File No. RH—05-044493

Notice Date: March 25, 2005

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective July 1, 2005.

SUBJECT OF HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization; (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995; and (3) amendments to the Miscellaneous Regulations for the Recording and Reporting of Data; and (4) amendments to the California Workers' Compensation Experience Rating Plan-1995. The hearing will be held in response to a filing, submitted on March 25, 2005, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB").

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the Insurance Commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the Insurance

Commissioner. Accordingly, the pure premium rates issued or approved by the Insurance Commissioner are advisory only.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

April 25, 2005—9:30 A.M.
California Department of Insurance
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734–11751.5, the Insurance Commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan-1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and California Workers' Compensation Experience Rating Plan-1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan-1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan-1995 is mandatory.

The pure premium rates recommended by the WCIRB to be effective July 1, 2005, as well as amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan-1995, are detailed in the WCIRB's filing letter and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective July 1, 2005 with respect to new and renewal policies with anniversary rating dates on or after July 1, 2005. The proposed advisory pure premium rates are 10.4% less than the January 1, 2005 advisory pure premium rates approved by the Insurance Commissioner.

The proposed pure premium rates applicable to new and renewal policies with anniversary rating dates on or after July 1, 2005 are based on (a) insurer losses

incurred during 2004 and prior accident years valued as of December 31, 2004; (b) insurer loss adjustment expenses for 2003 and prior years; and (c) except as noted, the same methodologies underlying the approved January 1, 2005 advisory pure premium rates.

The proposed pure premium rates do not reflect provision for the new permanent disability rating schedule the Administrative Director of the Division of Workers' Compensation recently adopted pursuant to Senate Bill No. 899, which amends California Labor Code Section 4660. The WCIRB is in the process of evaluating the impact of this new schedule on the cost of benefits. If appropriate based on that review, the WCIRB will submit amendments to the proposed pure premium and will also propose amendments to the pure premium rates effective July 1, 2005 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2005.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN-1995

The WCIRB recommends that the following revision to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 to become effective July 1, 2005 with respect to new and renewal policies with anniversary rating dates on or after July 1, 2005:

- Amend to specify that a policy providing coverage for the workers leased by a labor contractor to a client and written in the labor contractor's name can include the phrase "Leased Coverage For" or the acronym "LCF" followed by the client's name in Item 1 of the policy.

AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA

The WCIRB recommends that the following revision to the Miscellaneous Regulations for the Recording and Reporting of Data to become effective July 1, 2005 with respect to new and renewal policies with anniversary rating dates on or after July 1, 2005:

- Amend to permit a policy issued in the name of the client of a Labor Contractor to cover both the client's employees and its leased workers on the same policy.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN-1995

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan-1995 to become effective July 1, 2005 with respect to new and renewal policies with anniversary rating dates on or after July 1, 2005:

- Amend the Experience Rating Eligibility from \$28,400 to \$25,446 to reflect the proposed July 1, 2005 pure premium rate change.
- Amend to specify that: (a) a separate policy is required for each client that *leases any* of its workers, except for temporary workers, through a labor contractor, whether the client is experience rated or not; (b) the experience modification of the client, if any, must apply to the separate policy; (c) the experience reported for the separate policy must be used to calculate an experience modification for the client if the client is eligible or becomes eligible for experience rating; (d) a limiting and restricting endorsement must be applied to certain policies; (e) either the client or the labor contractor, but not both, may be the named insured on the separate policy; and (f) the insurer may cover both the workers leased to the client and the client's employees on a single policy, provided the client is the named insured on the policy.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by insurance companies. To the extent they are adopted, they may result in lower costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner has determined that there may be a cost savings and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein and implemented by insurers.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations [will not] have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations if adopted by insurers will not have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations will not have a significant effect on private persons or entities.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attention: Christopher A. Citko,
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3187

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above no later than 5:00 PM on May 19, 2005.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing, and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 45 Fremont Street, 22nd Floor, San Francisco, California 94105, between the hours of 9:00 AM and 4:30 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the commissioner's action.

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED RULEMAKING

The Department of Justice ("Department" or "DOJ") proposes to amend Sections 968.44 and 968.46 of Division 1, Title 11 of the California Code of Regulations (CCR) regarding handgun chamber

load indicators and magazine disconnect mechanisms after considering all comments, objections, and recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Penal Code sections 12125 and 12126, only handguns that are on a DOJ roster of handguns identified as not "unsafe" can be sold by licensed firearms dealers in this state. Beginning January 1, 2006, these laws also mandate that in order to be placed on the DOJ roster (handguns already on the roster are excluded), rimfire semiautomatic pistols must have a magazine disconnect mechanism, and center-fire semiautomatic pistols must have either a chamber load indicator or a magazine disconnect mechanism. On January 1, 2007, center-fire semiautomatic pistols will be required to have both a chamber load indicator and a magazine disconnect mechanism. The proposed regulations amend 11 CCR Sections 968.44 and 968.46 to provide specific criteria which semiautomatic pistols must meet to comply with the new requirements relative to chamber load indicators and magazine disconnect mechanisms.

Section 968.44 Testing Procedures

Currently, this section establishes various procedures that DOJ certified laboratories must follow when conducting handgun safety tests. The proposed amendment provides specifications for chamber load indicators and magazine disconnect mechanisms. Additionally, before a handgun can be submitted to the DOJ for placement on the handgun roster, certified laboratories must confirm that the handgun's chamber load indicator and/or magazine disconnect mechanism continues to function after completion of the safety testing.

Section 968.46 Required Records, Retention Periods, Reporting Changes

Currently, this section specifies the handgun safety test information that DOJ certified laboratories must record, report, and maintain. The proposed amendment will require the record keeping information to include a statement confirming the presence of any required chamber load indicator and/or magazine disconnect mechanism.

AUTHORITY AND REFERENCE

Authority: Penal Code sections 12126, 12130, and 12131.

Reference: Penal Code sections 12125, 12126, 12127, 12129, 12130, and 12131.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department.

The written comment period closes at 5:00 p.m. on May 24, 2005. Only comments received at the Department offices by that time will be considered. Please submit written comments to:

Mail: Jeff Amador, Field Representative
Department of Justice
Firearms Licensing and Permits Section
P.O. Box 820200
Sacramento, CA 94203-0200
or

Email: jeff.amador@doj.ca.gov

PUBLIC HEARING

The Department will hold a public hearing at 10:00 a.m. on Tuesday, May 24, 2005 for the purpose of receiving public comments regarding the proposed regulatory action. The hearing will be held in a wheelchair accessible room in the EDD/Sacramento Works Mark Sanders Complex located at 2901 50th Street, Sacramento, California. At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons who make oral comments also submit a written copy of their testimony at the hearing.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following determinations:

Mandate on local agencies or school districts: None

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts that a representative person or business would incur in reasonable compliance with the proposed action: Firearm manufacturers who want their handguns sold in California might incur some undetermined initial cost in designing/manufacturing their handguns in accordance with the new requirements. However, such costs would be the result of having to comply with the standards mandated by the new law (12126 PC), not the proposed regulations which simply provide specifications needed for implementation of the law.

Significant effect on housing costs: None.

Small business determination: The Department has determined the proposed amendments do not affect small business. This determination is based on the fact that the proposed amendments do not place any additional cost burden on small businesses nor their customers. Furthermore, as stated above, to the extent firearm manufacturers are affected, it would be due to the law that mandates the new standards, not the proposed regulations.

Assessment regarding effect on jobs/businesses: The proposed amendments will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses doing business within California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Department invites any person interested in presenting statements or arguments with respect to alternatives to the proposed regulations to do so at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to Jeff Amador at (916) 227-3661. The backup contact person is Stephanie Torres at (916) 227-5362. The mailing address for Jeff Amador and Stephanie Torres is:

Department of Justice
Firearms Licensing and Permits Section
P.O. Box 820200
Sacramento, CA 94203-0200

AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The initial statement of reasons and the text of proposed regulations are currently available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain copies by contacting Stephanie Torres at the telephone number or address listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. The Department will accept written comments on the modified text for 15 days after the date on which they are made available. Copies of any modified text will be available from the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain a written copy of any modified text by contacting Stephanie Torres at the telephone number or address above.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

Upon completion, the final statement of reasons will be available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain a written copy of the final statement of reasons by contacting Stephanie Torres at the telephone number or address above.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through the DOJ website at <http://caag.state.ca.us/firearms/regs/>.

**TITLE 13. DEPARTMENT OF
MOTOR VEHICLES**

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to amend Section 423.00, in Chapter 1, Division 1, Article 6, of Title 13, California Code of Regulations to identify the annual adjustment of specified fees for 2006.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on *May 23, 2005*, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Sections 1678, 9250.8, 9250.13, 12814.5, 14900, and 14900.1, of the Vehicle Code.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Vehicle Code section 1678 requires the department to annually review and adjust a variety of department fees beginning January 1, 2005. The fees are to be adjusted in an amount equal to the increase in the California Consumer Price Index for the prior year as calculated by the Department of Finance. The fee would only be increased when the calculated amount equals or is greater than \$0.50 rounded to the next highest whole dollar.

The department proposes to amend Section 423.00 to identify the Vehicle Code sections that authorize each fee identified in Vehicle Code section 1678, the dates the fee increases are effective and the amount of each adjusted fee. These fees would become effective January 1, 2006.

**DOCUMENTS INCORPORATED
BY REFERENCE**

There are no documents to be incorporated by reference.

FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The department is required by statute to adjust specific fees by increasing each fee in an amount equal to the increase in the California Consumer Price Index for the prior year, as calculated by the Department of Finance. Six different fees are proposed to be increased by one dollar.

- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.
- The adoption of this regulatory action will neither create nor eliminate jobs or create businesses in the state of California, will not result in the elimination of existing businesses, and will not reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will affect small businesses because the proposed regulatory action identifies specific fees that will be increased based on the increase in the California Consumer Price Index for the prior year. This regulation proposes to increase six fees specified in statute by one dollar (\$1).

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567, or cpatrick@dmv.ca.gov. In the absence of the department representative, inquiries

may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons and Express Terms) may be accessed at www.dmv.ca.gov/about/lad/regactions.htm.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to adopt Sections 152.00, 190.03, 268.02, 274.00, 280.12, 285.06, 292.06, and 340.13, and amend Sections 330.08 and 345.65, in Chapter 1, Division 1, Title 13, California Code of Regulations. The proposed regulations will establish surety bond requirements for motor vehicles and vessels without proper evidence of ownership documents, and surety bond requirements for occupational licenses issued by the department.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on *May 23, 2005*, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Vehicle Code sections 4157, 4307, 9923, 11102, 11202, 11301, 11401, 11402, 11612, 11710 and 11710.1, and section 995.010 et seq. of the Code of Civil Procedure.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The department has reviewed all of its surety bonds and has established standard language for the bond forms and regulations associated with each bond based on the authorizing and governing statute(s). The sections identified below in Title 13, California Code of Regulations, will identify the bond forms and conditions for bonds under the requirements of the statutes.

Vehicle Code section 4157 allows the department to accept a bond in the absence of required supporting evidence of ownership. Vehicle Code section 4307 authorizes the department to accept a bond when the documents are not sufficient to reasonably satisfy the department of the ownership of a vehicle and to identify any liens upon the vehicle. The surety bond for a vehicle without supporting documentation has been submitted to the Attorney General for approval. Section 152.00 is proposed in Title 13, California Code of Regulations, to specify the bond under the requirements of the authorizing and governing statutes.

Vehicle Code section 9923 authorizes the department to accept a surety bond in the absence of required evidence of ownership. The surety bond for an undocumented vessel has been submitted to the Attorney General for approval. Section 190.03 is

proposed in Title 13, California Code of Regulations, to specify the bond under the requirements of the authorizing and governing statutes.

Vehicle Code section 11710 requires a dealer to submit a surety bond before the issuance or renewal of a dealer occupational license. The surety bond for the issuance or renewal of a dealer occupational license has been submitted to the Attorney General for approval. Section 268.02 in Title 13, California Code of Regulations, will identify the bond form and conditions for dealers requiring a \$50,000 surety bond.

Legislation was recently enacted (AB 2848, Ch. 836, Stats. 2004) to require an occupational license for dealers who sell all-terrain vehicles and to require a surety bond for each licensee in the amount of \$10,000, effective January 1, 2005. The surety bond for occupational license programs with a \$10,000 bond requirement has been revised to include the new category of all-terrain vehicle dealers. The surety bond for Motorcycle Dealer, Motorcycle Lessor-Retailer, All-Terrain Vehicle Dealer, or Wholesale-Only Dealer has been submitted to the Attorney General for approval. Section 274.00 in Title 13, California Code of Regulations, will identify the bond form and conditions for dealers requiring a \$10,000 surety bond.

Vehicle Code section 11612 requires a lessor-retailer to file a surety bond prior to the issuance or renewal of a lessor-retailer occupational license. The surety bond for issuance or renewal of a lessor-retailer occupational license has been submitted to the Attorney General for approval. Section 280.12 in Title 13, California Code of Regulations, will identify the bond form and conditions for lessor-retailers.

Vehicle Code section 11710 requires a surety bond to be submitted before the issuance or renewal of a remanufacturer occupational license. The surety bond for issuance or renewal of a remanufacturer occupational bond has been submitted to the Attorney General for approval. Section 285.06 in Title 13, California Code of Regulations, will identify the bond form and conditions for remanufacturers.

Vehicle Code section 11301 requires a vehicle verifier to submit a surety bond before the issuance or renewal of a vehicle verifier occupational license. The surety bond for issuance or renewal of a vehicle verifier occupational license has been submitted to the Attorney General for approval. Section 292.06 in Title 13, California Code of Regulations, will identify the bond form and conditions for vehicle verifiers.

Vehicle Code section 11402 requires an occupational licensee to provide a surety bond to operate as a vehicle registration service. Legislation recently enacted (AB 2606, Ch. 430, Stats. 2004) amended section 11402 to increase the surety bond amount to \$25,000 effective January 1, 2005. The surety bond for an occupational licensee to operate as a vehicle

registration service has been submitted to the Attorney General for approval. Section 330.08 in Article 4.5, Title 13, California Code of Regulations, is proposed to be amended to reflect the increased monetary amount.

Vehicle Code section 11102 requires a driving school owner or all-terrain vehicle safety training organization principal to file a surety bond prior to the issuance or renewal of an occupational license. The surety bond for issuance or renewal of a driving school owner or all-terrain vehicle safety training organization principal occupational licensee has been submitted to the Attorney General for approval. Section 340.13 in Title 13, California Code of Regulations, will identify the bond form and conditions for the driving school owner or all-terrain vehicle safety training organization principal occupational licensees.

Vehicle Code section 11202 requires a traffic violator school owner to file a surety bond with the department before an occupational license is issued or renewed. The surety bond for issuance or renewal of a traffic violator school owner occupational license has been submitted to the Attorney General for approval. Section 345.65 in Title 13, California Code of Regulations, is proposed to be amended to identify the updated bond form and conditions for bonds under the Vehicle Code and the Code of Civil Procedure.

DOCUMENTS INCORPORATED BY REFERENCE

- Appointment of Director as Agent for Service of Process (form ADM 9050 (NEW 5/2004) WWW)
- Dealer Surety Bond (form OL 25 (REV. 11/2004))
- Remanufacturer Surety Bond (form OL 25A (REV. 11/2004))
- Surety Bond of Motorcycle Dealer, Motorcycle Lessor-Retailer, All-Terrain Vehicle Dealer, or Wholesale-Only Dealer (Less Than 25 Vehicles Per Year) (form OL 25B (REV. 11/2004))
- Lessor-Retailer Surety Bond (form OL 25C (REV. 11/2004))
- Vehicle Verifier Surety Bond (form OL 26 (REV. 11/2004))
- Driving School Owner or All-Terrain Vehicle Safety Training Organization Principal Sure Bond (form OL 218 (REV. 11/2004))
- Registration Service Surety Bond (form OL 605 (REV. 11/2004))
- Traffic Violator School Owner Surety Bond (form OL 704 (REV. 11/2004))
- Motor Vehicle Ownership Surety Bond (form REG 5057 (NEW 12/2004))
- Undocumented Vessel Surety Bond (form REG 5058 NEW 12/2004))

These forms are not published in Title 13 because it would be impractical and cumbersome to publish the forms in the department's regulations. The forms have been submitted to the Attorney General for publication in the California Regulatory Notice Register and in Title 11, California Code of Regulations. The bond forms are presently available from the department and may be found on the department's website at www.dmv.ca.gov.

FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations implement existing and new statutes by identifying the department's surety bond forms and the bond conditions.
- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.
- The adoption of this regulatory action will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and will not reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action may affect small businesses because the proposed regulatory action implements existing and new statutes by identifying the department's surety bond forms and the bond conditions.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567, or cpatrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Notice of Proposed Regulatory Action, Initial Statement of Reasons and Express Terms) may be accessed at www.dmv.ca.gov/about/lad/regactions.htm.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully

modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 17. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIRBORNE TOXIC CONTROL MEASURE FOR STATIONARY COMPRESSION IGNITION ENGINES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the airborne toxic control measure for stationary compression-ignition engines. This notice summarizes the proposed amendments to the ATCM. The staff report presents the proposed amendments to the ATCM in greater detail.

DATE: May 26, 2005

TIME: 9:00 a.m.

PLACE: California Environmental
Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., May 26, 2005, and may continue at 8:30 a.m., May 27, 2005. This item may not be considered until May 27, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before May 26, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 17, California Code of Regulations (CCR) section 93115.

BACKGROUND

On February 26, 2004, the Board approved the Stationary Compression Ignition Engine ATCM to reduce diesel particulate matter (PM) emissions from new and in-use stationary diesel engines. Among other provisions, the ATCM contains a 0.15 grams per brake horsepower-hour (g/bhp-hr) PM standard for new stationary compression ignition agricultural engines. Just prior to the effective date of the standard (January 1, 2005) local air districts and agricultural engine distributors notified ARB of their concern about the availability of compliant agriculture pump engines greater than 50 hp and less than 175 horsepower (hp).

ARB conducted an extensive investigation culminating in the Board taking emergency action at a regularly scheduled Board meeting on March 17, 2005. During the meeting, the Board heard a presentation from ARB staff and testimony from stakeholders within the agricultural industry, agriculture equipment distributors and dealers, engine manufacturers, and others. The testimony confirmed staff's findings that only a limited number of new stationary agricultural pump engines greater than 50 hp and less than 175 hp can meet the 0.15 g/bhp-hr PM standard. The Board took emergency action by removing the requirement that new stationary agricultural engines greater than 50 hp and less than 175 hp meet the 0.15 g/bhp-hr PM standard. Instead, such engines must meet the appropriate California and federal off-road certification standards for new engines. This action was based on the limited availability of 0.15 g/bhp hr PM-compliant engines in the greater than 50 to less than 100 hp range and the limited number of manufacturers offering compliant engines in the 100 to less than 175 hp range.

The proposed revisions to the ATCM would ensure the continued availability of off-road California- and federal-compliant stationary agricultural pump engines, in all size ranges by all manufacturers, by making the emergency regulatory changes permanent.

DESCRIPTION OF THE PROPOSED REGULATORY AMENDMENTS

For new stationary agriculture diesel pump engines that are greater than 50 hp and less than 175 hp, the proposed amendments require compliance with the current Off-Road Compression Ignition Engine Standards (Title 13 CCR Section 2423) applicable to an engine of the same brake horsepower rating and model year. These standards represent best available control technology for this category of engines.

For new stationary agriculture diesel engines used in other types of agriculture operations or other applications, such as generators, no amendments are being proposed at this time. The ATCM requires that

these engines continue to meet the 0.15 g/bhp-hr PM standard, which is more stringent than the current off-road compression ignited engine PM standards.

ADDITIONAL PROVISIONS UNDER CONSIDERATION

As directed by the Board on March 17, 2005, the ARB staff will also consider amendments to the ATCM for other stationary applications using new or in-use diesel engines, such as standby generators. Staff may also propose various clarifying provisions, and make non-substantive and minor editorial changes to the stationary engine ATCM. During the 45-day comment period and leading up to the Board hearing starting on May 26, 2005, staff plans to collect additional information on this issue. If staff believes that it is appropriate to modify the current staff recommendation, the ARB staff will present proposed changes for the Board's consideration at the hearing. As described below, an additional 15-day comment period will then be provided if the Board approves either the language proposed by ARB staff or a different version.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that require these stationary agricultural engines to meet emission standards. There are however federal emission standards for nonroad (off-road) mobile engines. In practice, the same engine models are typically used for both stationary and nonroad applications. Thus, though federal law does not require it, the nonroad standards can be reasonably applied to stationary agricultural engines. The proposed revisions to the ATCM will align the emission standards for stationary agricultural engines with these nonroad standards with which engine manufacturers have demonstrated an ability to comply. These Federal standards are set forth in the United States Code of Federal Regulations Title 40, Chapter 1, Part 89, Subpart B and Part 1039 Subpart B.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulation action, which includes a summary of the environmental and economic impacts of the proposal. The ISOR is entitled, "Staff Report: Initial Statement of Reasons for Proposed Revisions to the Airborne Toxic Control Measure for Stationary Compression Ignition Engines."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB'S web site listed below, or may be obtained from the Public Information

Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing which will begin on May 26, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Tony Andreoni, Manager of the Process Evaluation Section, at (916) 324-6021 or by email at tandreoni@arb.ca.gov, or Barbara Cook, Air Pollution Specialist, at (916) 327-1507 or by email at bcook@arb.ca.gov.

Further, the agency representative and designated back-up contacts, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/statde05/statde05.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed amendments are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to state or local agencies.

The proposed regulatory action will also impose a mandate upon and create costs to local agencies (i.e., local air pollution control and air quality management districts; the "districts"). However, in this case, such administrative costs to the districts are recoverable by

fees that are within the districts' authority to assess (see Health and Safety Code sections 42311 and 40510). Therefore, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons and businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed ATCM will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed ATCM can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory amendments will affect small businesses since the proposed amendments may have a beneficial impact on small businesses.

In accordance with H&SC 43013(c), the Executive Officer has determined that the proposed amendments are necessary, cost-effective, and technologically feasible.

Before taking final action on the proposed amendments, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be

considered by the Board, written submissions must be received **no later than 12:00 noon, May 25, 2005**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to:

statde05@listserv.arb.ca.gov,

and received at the ARB **no later than 12:00 noon, May 25, 2005**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916)[00a0]322-3928 and received at the ARB **no later than 12:00 noon, May 25, 2005**.

The Board requests but does not require 30 copies of any written submission. Also the ARB requests that written, facsimile, and e-mail statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory amendment is proposed under the authority granted to the ARB in Health and Safety Code sections 39600, 39601, 39650, 39658, 39659, 39665, 39666, 41511, and 43013. This action is proposed to implement, interpret, or make specific Health and Safety Code sections 39002, 39650, 39658, 39659, 39665, 39666, 40000, 41511, and 43013.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory amendments as originally proposed or with non-substantial or grammatical modifications. The Board may also adopt the amendment language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the amendment language as modified could result from the proposed action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information

Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

TITLE 22. DEPARTMENT OF HEALTH SERVICES

ACTION

Notice of Emergency Rulemaking
Title 22, California Code of Regulations

SUBJECT

Estate Recovery Regulations, **R-32-00E**

The California Department of Health Services (Department) has adopted the regulations described in this notice on an emergency basis, and they are now in effect.

PUBLIC PROCEEDINGS

The Department will conduct a public hearing commencing at 10 a.m. on May 23, 2005 in the Auditorium at 1500 Capitol Avenue, Sacramento, CA, during which time any interested person or such person's duly authorized representative may present statements, arguments, or contentions (hereinafter "comments") relevant to the action described in this notice.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation control number, R-32-00E.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on May 27, 2005, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation

package identifier "R-32-00E" in the subject line to facilitate timely identification and review of the comment), or

4. By using the "Making Comments" link to the Department website at <http://www.dhs.ca.gov/regulation/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

TO OBTAIN THE REGULATIONS REFERENCED IN THIS NOTICE

1. Materials regarding these regulations (including this public notice, the regulation text, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then clicking on the "Select DHS regulations" button.
2. In order to request a copy of this regulation package be mailed to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.

INQUIRIES

Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Margaret Hoffedtz of Payment Systems Division at (916) 650-0582.

All other inquiries concerning the action described in this notice may be directed to Lynette Cordell of the Office of Regulations at (916) 440-7695, or to the designated backup contact person, Linda Tutor, at (916) 440-7695.

Upon request, this document will be made available in Braille, large print, and audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write: Linda Tutor, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695 and/or California Relay at 711/1-800-735-2929.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Welfare and Institutions (W&I) Code, sections 10725 and 14124.5 authorizes the director of the Department of Health Services (Department) to adopt, amend, or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal Program.

Existing federal law, Title 42, United States Code (USC), section 1396p, and state W&I Code, section 14009.5, require the Department to seek reimbursement from the estates of deceased Medi-Cal beneficiaries for certain Medi-Cal paid services provided on

or after the individual's 55th birthday, unless specific exemptions or other limitations apply. An estate is defined as those assets owned by the Medi-Cal beneficiary at the time of death, including assets distributed through joint tenancy, tenancy in common, survivorship, life estate, living trust, or annuities purchased on or after September 1, 2004. The Department's estate recovery (ER) claims include nursing facility services, home and community-based services, and related hospital and prescription drug services. Federal law also allows states to recover for other services as specified under their State Plan. In California, these include all payments for health care premiums and services provided to Medi-Cal beneficiaries after their 55th birthday. The Department's claim against the estate of a deceased Medi-Cal beneficiary is limited to the value of the decedent's assets or the amount of the medical services paid by Medi-Cal, whichever is less.

In 1993, the State adopted Title 22, California Code of Regulations (CCR), sections 50960–50964, to implement, interpret and make specific the state and federal laws governing the ER activities for the Medi-Cal Program. Sections 50960–50964 specifically address ER activities related to definitions, estate claims, notification, undue hardship criteria, and estate hearings. Over the last several years, there has been increasing sensitivity regarding estate recovery activities with concerns expressed by advocate groups and legislators over perceived inequities in the ER Program, caused by inadequate regulations which result in the inconsistent application of policies.

A recent settlement agreement and permanent injunction in the case of *California Advocates for Nursing Home Reform et al. v. Diana M. Bontá, et al.* (2003) 106 Cal. App. 4th 498, (*CANHR v. Bontá*) by the City and County of San Francisco Superior Court, requires the Department to make specific amendments to the ER regulations in three different phases. This emergency regulatory action fulfills the Department's compliance with the court for the second phase and provides the necessary clarity and detail to enable the Department to consistently administer and implement the estate recovery mandates of state and federal law.

This emergency regulatory action repeals Title 22, CCR, sections 50960 and 50961, adopts sections 50960.2, 50960.4, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.36, 50961, and 50965, and amends sections 50962, 50963, and 50964 to specifically accomplish the following:

1. Provides a straightforward way for attorneys, estate and financial planners, insurance agents, and the general public to identify and access regulations that pertain to Third Party Liability by adopting Chapter 2.5 under Title 22 of the CCR.

2. Adds the definitions of "Fair Market Value", "Irrevocable Transfer", "Life Estate", "Revocable Transfer", and "Voluntary Post Death Lien" to the regulations, as well as amend existing definitions of "Applicant," "Equity interest," "Estate," and "Estate Hearing" for clarification purposes.
3. Specifies the health care services included in the Department's ER claim, and clarifies the criterion when the Department shall not make a claim.
4. Specifies the life estate interests that are subject to the Department's ER claim and how the value is determined and incorporates by reference the "Life Estate and Remainder Interest Table" (Table) as specified in Section 3258.9(A)(Revision 64), Part 3 of the Centers for Medicare and Medicaid Services' State Medicaid Manual dated November 1994.
5. Specifies the hardship waiver criteria for a waiver of the Department's claim; clarifies where to apply for an estate hearing; and clarifies the collection process when a waiver or hearing is sought. Incorporates by reference the form "Application for Hardship Waiver", form DHS 6195, dated August 2004, which is provided by the Department for use when applying for a waiver.
6. Clarifies requirements and addresses pertaining to the notification of the death of a Medi-Cal beneficiary, and specifies the date the Department will deem as receipt of notification.
7. Provides clarity on the use of, and processes involved with, a Voluntary Post Death Lien. Specifies the annual percentage rate of interest charged on an unpaid claim.
8. Makes non-substantive amendments to regulations to correct spelling, grammar, and to redesignate sections, subsections, and paragraphs.

AUTHORITY

Sections 10725, 14043.75, and 14124.5, Welfare and Institutions Code.

REFERENCE

Section 1396p(b), and 1382c, 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; *Dalzin v. Belshé* (N.D. Cal. 1998) 993 F. Supp. 732; Sections 40, 215, 1215, 9202, and 19202, Probate Code; State Medicaid Manual HCFA-Pub. 45-3, Transmittal No. 65 § 3810; Section 69100, Government Code; Section 1094.5, et seq., Code of Civil Procedure; and California Constitution, Article 15, Section 1.

FISCAL IMPACT ESTIMATE

A. Fiscal Effect on Local Government: None

- B. Fiscal Effect on State Government: Savings of approximately \$141,000 in the current State Fiscal Year.
- C. Fiscal Effect on Federal Funding of State Programs: Savings of approximately \$141,000 in the current State Fiscal Year.
- D. There is no impact on private entities (business, private persons) for reasonably complying with these regulations.
- E. Other Non-discretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would not affect small businesses because small businesses are not required to comply or enforce the proposed regulations, nor would any benefit or detriment be derived from enforcement.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available

upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Linda Tutor, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten working days prior to a public hearing.

TITLE 22. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 22, CALIFORNIA CODE OF REGULATIONS, AMENDMENTS TO SECTION 12705: SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHHA) proposes to amend Title 22, California Code of

Regulations, section 12705 to add a new subsection providing an alternative risk level for the chemical acrylamide in breads and cereals.

PUBLIC PROCEEDINGS

A public hearing will be held on **Tuesday, May 24, 2005**, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The public hearing will commence at 10:00 a.m. in the Byron Sher Auditorium, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California, and will last until all business has been conducted, or until 5:00 p.m.

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHHA at the following address by 5:00 p.m. on **Tuesday, May 24, 2005**, which is hereby designated as the close of the written comment period:

Written comments regarding this proposed action may be sent by mail or by facsimile and should be addressed to:

Susan Luong
Office of Environmental Health
Hazard Assessment
Proposition 65 Implementation Program
P.O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 323-8803
Telephone: (916) 445-6900

Comments sent by courier should be delivered to:

Susan Luong
Office of Environmental Health
Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

Comments may also be transmitted via email (sluong@oehha.ca.gov).

It is requested but not required that written statements or arguments be submitted in triplicate.

If you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or sluong@oehha.ca.gov by May 10, 2005. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Inquiries concerning the substance and processing of the action described in this notice may be directed to Susan Luong, in writing at the address given above, or by telephone at (916) 445-6900. Ms. Cynthia Oshita is a back-up person for inquiries concerning processing of this action and is available at the same telephone number.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The Safe Drinking Water and Toxic Enforcement Act of 1986¹, commonly known as Proposition 65 (hereinafter referred to as “the Act”), prohibits a person in the course of doing business from knowingly and intentionally exposing an individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code Section 25249.6). The Act also prohibits such persons from knowingly discharging a listed chemical into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water (Health and Safety Code Section 25249.5).

For chemicals known to the State to cause cancer, an exemption is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which he or she is responsible poses no significant risk, or that a discharge to drinking water which otherwise complies with all applicable laws and requirements would result in an exposure through drinking water at a level which poses no significant risk (Health and Safety Code Sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk of cancer may be made by referencing Title 22, California Code of Regulations sections 12701 to 12721. Section 12703(b) provides for the use of an alternative risk level in certain situations.

This proposed regulation sets forth an alternative risk level for acrylamide in breads and cereals by adopting subsection (e) to section 12705. The proposed alternative risk level is a level calculated to result in one excess case of cancer in an exposed population of 10,000, assuming lifetime exposure at the level in question, or a concentration of acrylamide in breads and cereals that is less than 200 parts per billion.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Section 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

**IMPACT ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

Because the Act does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a mandate on local

agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action because Proposition 65 does not impose any duty on local agencies or school districts.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

**EFFECT ON FEDERAL FUNDING
TO THE STATE**

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY AFFECTING
BUSINESS, INCLUDING ABILITY TO COMPETE**

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact on directly affected businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation is intended to assist regulated businesses in determining whether a warning is required for acrylamide in certain specified foods.

**IMPACT ON THE CREATION, ELIMINATION,
OR EXPANSION OF JOBS/BUSINESSES**

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

¹ Health and Safety Code section 25249.5 et seq.

EFFECT ON SMALL BUSINESSES

While the Act does not apply at all to very small businesses employing less than ten people, OEHHA has determined that the proposed regulation will not impose any new requirements on small business. Rather, the proposed regulatory action will assist small businesses subject to the Act in determining whether a warning is necessary for acrylamide in certain specified foods.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by the Office, or that has otherwise been identified and brought to the attention of the Office would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an initial statement of reasons for the regulation, all the information upon which the regulation is based, and the text of the regulation. A copy of the initial statement of reasons and a copy of the text of the regulation is available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation are also available at the OEHHA's Web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The final statement of reasons is also available at the OEHHA's Web site at www.oehha.ca.gov.

TITLE 22. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 22, CALIFORNIA CODE OF REGULATIONS, AMENDMENTS TO SECTION 12601: CLEAR AND REASONABLE WARNINGS

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 22, California Code of Regulations, Section 12601 to add new "Safe Harbor" provisions specific to warnings for acrylamide exposures from food.

PUBLIC PROCEEDINGS

A public hearing will be held on **Tuesday, May 24, 2005**, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The public hearing will commence at 10:00 a.m. in the Byron Sher Auditorium, at the California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California, and will last until all business has been conducted, or until 5:00 p.m.

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA at the following address by 5:00 p.m. on **Tuesday, May 24, 2005**, which is hereby designated as the close of the written comment period:

Written comments regarding this proposed action may be sent by mail or by facsimile and should be addressed to:

Susan Luong
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation Program
P. O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 323-8803
Telephone: (916) 445-6900

Comments sent by courier should be delivered to:

Susan Luong
Office of Environmental Health Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

Comments may also be transmitted via email (sluong@oehha.ca.gov).

It is requested but not required that written statements or arguments be submitted in triplicate.

If you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900

or sluong@oehha.ca.gov by May 10, 2005. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Inquiries concerning the substance and processing of the action described in this notice may be directed to Susan Luong, in writing at the address given above, or by telephone at (916) 445-6900. Ms. Cynthia Oshita is a back-up person for inquiries concerning processing of this action and is available at the same telephone number.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 (hereinafter referred to as "Proposition 65" or the "Act"), prohibits a person in the course of doing business from knowingly and intentionally exposing an individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code section 25249.6). Implementing regulations were adopted in Title 22, California Code of Regulations, Section 12601, to interpret and make specific the "clear and reasonable" warning requirement.

The existing regulations establish criteria and prescribe specific messages and methods for consumer product, occupational and environmental exposure warnings that are deemed by OEHHA to be in compliance with the "clear and reasonable" warning requirement specified in the Act. Under the existing criteria, a warning is "clear" if it clearly communicates that the chemical in question is known to the State to cause cancer, or birth defects or other reproductive harm, and "reasonable" if the method employed to transmit the message is reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure.

The proposed amendment to Section 12601 would add provisions to the regulation specifically for the purpose of giving warnings for exposures to the chemical acrylamide in foods. In April 2002, acrylamide was discovered to be present in starchy foods cooked or heat processed at high temperatures. Given the pervasiveness of the chemical in many common foods and the public health necessity of encouraging people to consume a balanced diet, OEHHA determined that the development of a specific "safe harbor" warning for acrylamide in foods would provide assistance to the regulated community to help them comply with the Act and would provide the public with a more balanced and appropriate warning message for exposures to this chemical in foods. The

proposed regulation also expressly provides that a warning for acrylamide in foods may be provided at the point of sale of the food product and need not be included on package labels for each individual product.

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

Health and Safety Code section 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action because Proposition 65 does not impose any duty on local agencies or school districts.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action because state agencies are not subject to the warning or discharge provisions of the Act.

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact on directly affected businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation is intended to assist regulated businesses in providing clear and reasonable warnings for acrylamide exposures from foods and thereby comply with the requirements of the Act.

**IMPACT ON THE CREATION, ELIMINATION,
OR EXPANSION OF JOBS/BUSINESSES**

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any requirements on small business. Rather, the proposed regulatory action will assist small businesses subject to the Act in determining whether or not a given warning satisfies the "clear and reasonable" warning criteria specified in the Act.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by the office, or that has otherwise been identified and brought to the attention of the office would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

OEHHA has prepared and has available for public review an initial statement of reasons for the regulation, all the information upon which the regulation is based, and the text of the regulation. A copy of the initial statement of reasons and a copy of the text of the regulation is available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed

regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation are also available at the OEHHA's Web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The final statement of reasons is also available at the OEHHA's Web site at www.oehha.ca.gov.

**TITLE 22. OFFICE OF
ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

NOTICE OF PROPOSED RULEMAKING

**TITLE 22, CALIFORNIA CODE
OF REGULATIONS
AMENDMENT TO SECTION 12705:
SPECIFIC REGULATORY LEVELS
POSING NO SIGNIFICANT RISK**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment proposes to establish a specific regulatory level posing no significant risk for acrylamide and amend Title 22, California Code of Regulations, Section 12705(b). Upon adoption, this proposed level would supersede the regulatory level for acrylamide established in 1990 in Section 12705(c).

PUBLIC PROCEEDINGS

A public hearing will be held on **Tuesday, May 24, 2005**, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The public hearing will commence at 10:00 a.m. in the Byron Sher Auditorium, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California and will last until all business has been conducted, or until 5:00 p.m.

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **Tuesday, May 24, 2005**, which is hereby designated as the close of the written comment period.

Written comments regarding this proposed action can be sent by mail or by fax addressed to:

Susan Luong
Office of Environmental Health
Hazard Assessment
Proposition 65 Implementation Program
P. O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 323-8803
Telephone: (916) 445-6900

Comments sent by courier should be delivered to:

Susan Luong
Office of Environmental Health
Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

Comments may also be transmitted via email addressed to: (sluong@oehha.ca.gov).

It is requested but not required that written statements or arguments be submitted in triplicate.

If you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or sluong@oehha.ca.gov by May 10, 2005. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the substance and processing of the action described in this notice to Susan Luong, in writing at the address given above, or by telephone at (916) 445-6900. Ms. Cynthia Oshita is a back-up contact person for inquiries concerning processing of this action and is available at the same telephone number.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as Proposition 65 (hereinafter referred to as "Proposition 65" or "the Act"), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code Section 25249.6). The Act also prohibits such persons from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water (Health and Safety Code Section 25249.5).

For chemicals known to the State to cause cancer, an exemption from the warning requirement and the discharge prohibition is provided by the Act when a

person in the course of doing business is able to demonstrate that an exposure for which he or she is responsible poses no significant risk, or that a discharge to drinking water which otherwise complies with applicable requirements would result in an exposure through drinking water at a level which poses no significant risk (Health and Safety Code Sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk of cancer may be made by referencing Title 22, California Code of Regulations sections 12701 to 12721.¹ Section 12701 describes alternative methods for making a determination that a given exposure poses no significant risk. One such method is through the application of a specific regulatory level established for the chemical in question, if one has been established in Section 12705. The levels set in Section 12705(b) supersede the levels established in Section 12709 (Exposure to Trace Elements) and Section 12711 (Levels Based on State or Federal Standards).

This proposed regulation sets forth a no significant risk level (NSRL) for acrylamide that OEHHA proposes to adopt into Section 12705(b). This proposed NSRL would supersede the NSRL for acrylamide which is currently established in Section 12705(c). The proposed NSRL was developed by OEHHA staff using scientific methods consistent with procedures outlined in Section 12703.

Details on the basis for the proposed number are provided in the reference cited below, which is also included in the rulemaking record. The reference is a risk assessment document prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below. The proposed level described below for inclusion in Section 12705 represents the level of exposure to the chemical which is calculated to result in no more than one excess case of cancer in an exposed population of 100,000, assuming exposure over a 70-year lifetime (10^{-5} lifetime risk of cancer).

This proposed regulation adopts the following NSRL into Section 12705(b) for acrylamide, a chemical known to cause cancer:

Chemical	NSRL, in units micrograms per day	Reference
Acrylamide	1.0	OEHHA (2005)

Levels established for carcinogens in Section 12705(b) supersede any existing levels for these carcinogens in Section 12705(c) and Section 12705(d) and this NSRL supercedes the level set for acrylamide in 1990 in Section 12705(c).

¹ All further references are to Title 22 of the California Code of Regulations, unless otherwise indicated.

The risk assessment which was used by the Office of Environmental Health Hazard Assessment to determine the stated level is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2005). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen Acrylamide. OEHHA Reproductive and Cancer Hazard Assessment Section, California Environmental Protection Agency, Oakland, March 2005.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Office of Environmental Health Hazard Assessment (OEHHA) has determined the proposed regulatory action would not pose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. OEHHA believes the proposed amendments to the regulation will provide clarity and certainty for businesses that must comply with Proposition 65.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any requirements on small business. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the text of the regulation. A copy of the Initial Statement of Reasons, a copy of the text of the regulation and copies of the risk assessment which was used by OEHHA to determine the NSRL is available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. This document is also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed

regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation will also be available at the OEHHA's Web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The Final Statement of Reasons will also be available at the OEHHA's Web site at www.oehha.ca.gov.

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

(MOBILEHOME PARKS AND SPECIAL OCCUPANCY PARKS)

NOTICE IS HEREBY GIVEN that the California Department of Housing and Community Development (HCD), proposes to amend existing regulations and adopt new regulations governing Mobilehome Parks and Special Occupancy Parks.

PUBLIC HEARING

A public hearing has been scheduled at which time any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearing will continue until all testimony is completed, and will be held as follows:

Monday, May 23, 2005
HCD (Headquarters)
1800 3rd Street, Room 183/185
Sacramento, CA 95814
10:00 a.m.

Pre-hearing registration will be conducted prior to the hearing. Those registered will be heard in order of their registration. Anyone else wishing to speak at the hearing will be afforded an opportunity after those registered have presented their testimony. The time allowed for each person to present oral testimony may be limited if a substantial number of people wish to speak.

Individuals presenting oral testimony are requested, but not required, to submit a written copy of their statements. The hearing will be adjourned immediately following the completion of the oral testimony.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to HCD. All written comments must be received by HCD at this office no later than 5:00 p.m. on May 23, 2005 in order to be considered. Written comments may be submitted by mail, e-mail, or as follows:

By mail to:

Department of Housing and
Community Development
Division of Codes and Standards
P.O. Box 1407
Sacramento, CA 95812-1407
ATTN: Mobilehome and Special Occupancy
Parks Programs

By e-mail to: parksregs@hcd.ca.gov

By facsimile to: (916) 327-4712
ATTN: Bradley Harward

PERMANENT ADOPTION OF REGULATIONS

Following the public comment period, HCD may adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of minor technical or grammatical changes, the text of any modified proposal will be available for at least 15 days prior to its adoption from the contact person(s) designated in this Notice, and will be mailed to those persons who have submitted written or oral testimony related to this proposal or who have requested notification of any changes to the proposal. HCD will accept written comments on the modified regulations during the 15-day period.

AUTHORITY AND REFERENCE

Health and Safety Code section 18300 grants HCD the authority to adopt regulations governing mobile-home parks and Health and Safety Code section 18865 grants HCD the authority to adopt regulations governing special occupancy parks. These regulations implement and interpret Health and Safety Code sections 18200 through 18700 (Mobilehome Parks Act) and 18860 through 18874 (Special Occupancy Parks Act). The actual text of these statutes is available on the Department's website and at:

<http://www.leginfo.ca.gov>

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

The Mobilehome Parks Act (MPA) contained in the Health and Safety Code (HSC) commencing with section 18200 and the Special Occupancy Parks Act

(SOPA) commencing with HSC section 18860 were enacted for the benefit of mobilehome and special occupancy park operators, residents and users to assure their health, safety and general welfare, to provide them a decent living environment, and to protect their investments in their manufactured homes, mobilehomes, multi-unit manufactured housing (MH-unit), and recreational vehicles.

Summary of Existing Regulations

The Mobilehome and Special Occupancy Parks Programs within HCD's Codes and Standards Division develop, administer and enforce uniform statewide standards which assure owners, operators, residents, and users of mobilehome and special occupancy parks, protection from risks to their health and safety.

Summary of Effect of Proposed Regulatory Action

The purpose of these changes is to update the existing regulations for mobilehome parks and special occupancy parks, comply with the legislative mandate to require permits and create a new approval process for the creation, alteration, movement, or shifting of lot lines within a park, and to address issues and concerns that have been presented by the general public and HCD staff.

The amendments require an applicant proposing to create or change a lot line in a park to obtain a permit from the enforcement agency. (The proposed permit fee is consistent with all other fees currently contained in the regulations.) Additionally, the proposed amendments include: additional definitions, clarification of permit requirements for grading, installation of factory-built housing in mobilehome parks, park electrical system considerations and water pressure testing issues.

The proposed amendments also incorporate changes to enhance the clarity of the following issues: roadway widths for parks constructed prior to September 15, 1961, the location of LPG tanks, the applicability of Article 7 of Chapter 2 to commercial modulars, the distinction between MH-unit separations vs. setbacks, the enclosing of required exits on MH-units, and stairway requirements.

The proposed amendments also provide less restrictive requirements for the following issues: energy requirements for cabanas, firewall locations for garages and storage buildings, the weight of awnings attached to MH-units, allowance of wooden posts on a lot line, and stairway widths on carport sides.

Those sections within Title 25, California Code of Regulations affected by this rulemaking, and the specific purpose for each adoption or amendment contained in these proposed regulations, is set forth in the Initial Statement of Reasons for this regulatory

action. Non-regulatory amendments for grammatical/technical reasons have also been made throughout the amended chapters.

SECTIONS AFFECTED

Following are the specific sections of Chapter 2 and Chapter 2.2 affected by this proposed action:

Amend Chapter 2 Sections 1002, 1004, 1018, 1020.4, 1104, 1106, 1110, 1112, 1120, 1134, 1152, 1183, 1185, 1212, 1319, 1320, 1330, 1352, 1428, 1429, 1443, 1464, 1468, 1498, and 1514.

Adopt Chapter 2 Sections 1019, 1105 and 1276.

Amend Chapter 2.2 Sections 2002, 2004, 2018, 2020.4, 2104, 2106, 2108, 2110, 2112, 2120, 2126, 2134, 2152, 2183, 2185, 2212, 2226, 2319, 2428, 2429, and 2498.

Adopt Chapter 2.2 Sections 2105 and 2276.

POLICY STATEMENT OVERVIEW

The Mobilehome and Special Occupancy Parks Programs within HCD are responsible for adopting and enforcing preemptive state regulations for the construction, use, maintenance, and occupancy of privately owned mobilehome and special occupancy parks within California.

Furthermore, recent legislation (Ch. 815, Stats. 2003) requires implementing permit requirements for lot line creation or changes within mobilehome and special occupancy parks.

HCD is proposing to adopt and amend regulations relating to both the Mobilehome Parks Act and Special Occupancy Parks Act.

SMALL BUSINESS IMPACT STATEMENT

SMALL BUSINESSES are affected by these regulations. A minimal permit fee is required of park owners and operators who wish to create or change lot lines. The requirement for a permit to create or change a lot line is mandated by the legislature through Health and Safety Code sections 18610.5 and 18872.1 (Ch 815, Stats of 2003). Currently, local planning department approval is required to create or change a lot line in a park. Many local government planning departments require Zoning Board meetings for this approval and charge a fee, often in excess of \$1,000, for the meeting. Obtaining a permit will add a known minimal fee and consistency to the process.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

HCD has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost of a permit for the creation or change in a lot line in a mobilehome or special occupancy park is minimal, is mandated by recent legislation (Ch 815, Stats of 2003), and in many instances represents a significant cost savings to affected individuals. Currently the local planning department in the jurisdiction of the park must approve lot line changes regardless of the enforcement agency for the park. Additionally, planning and zoning meetings are often required with the costs of the meetings paid by the park operator. HCD's implementation of a standard process and the standard fee currently utilized throughout the regulations will provide guidelines and a consistent fee for this service throughout the state.

HCD is not aware of any other cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the remaining proposed actions. The additional proposed amendments serve only to clarify existing requirements.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

HCD has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

HCD must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of HCD, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. HCD invites interested persons to

present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON(S)

HCD has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from HCD at the following location or from the contact people listed below:

Department of Housing and
Community Development
Division of Codes and Standards
1800 Third Street, Room 260
Sacramento, CA 95814
Fax (916) 327-4712

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the Department's website at the following address:

<http://www.hcd.ca.gov/codes/mp>

Questions regarding the regulatory process may be directed to:

Dee Benbow, Staff Services Analyst
Telephone Number: (916) 327-2801/
Fax (916) 327-4712
E-mail: dbenbow@hcd.ca.gov

Clarification regarding the substance of this regulatory proposal may be directed to:

Bradley Harward, Mobilehome & Special
Occupancy Parks Program Manager
Telephone Number: (916) 324-4907/
Fax (916) 327-4712
E-mail: bharward@hcd.ca.gov

Written comments may be submitted by any of the following methods:

By mail to:

Department of Housing
and Community Development
Division of Codes and Standards
P.O. Box 1407
Sacramento, CA 95812-1407
ATTN: Mobilehome and Special Occupancy
Parks Programs

By e-mail to: parksregs@hcd.ca.gov

By facsimile to: (916) 327-4712
ATTN: Bradley Harward

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD

NOTICE OF CHANGE OF TIME

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE STATE AMBIENT AIR QUALITY STANDARD FOR OZONE

By notice dated March 1, 2005, and published in the March 11, 2005, California Notice Register, Register 2005, No. 10-Z, the Air Resources Board (the Board or ARB) announced it would conduct a public hearing to consider adoption of amendments to regulations for the state ambient air quality standard for ozone. The hearing was scheduled to start at 9:00 a.m.

PLEASE BE ADVISED that the start time of the meeting of the California Air Resources Board **has changed** as follows:

DATE: April 28, 2005

TIME: **1:00 p.m.**

PLACE: California Environmental
Protection Agency
Air Resources Board
Auditorium
9530 Telstar Avenue
El Monte, CA 91731

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR SR83 Chino Creek Bridge Replacement Project San Bernardino County

The Department of Fish and Game (Department) received notice on March 25, 2005 that the California Department of Transportation (Caltrans) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act

("CESA"). This project consists of the replacement of the existing bridge across Chino Creek at Post Mile 0.9 on State Route 83 in San Bernardino County, California. The bridge replacement will take one to two seasons to complete and will impact approximately 2.27 acres of habitat due to construction and construction noise.

The U.S. Fish and Wildlife Service, on January 14, 2005, issued to the Federal Highway Administration (FHWA), a no jeopardy federal biological opinion (FWS-SB-2670.4) which considers the Federally and State endangered least Bell's vireo (*Vireo bellii pusillus*) and authorizes incidental take. Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination that the Federal Biological Opinion FWS-SB-2670.4 is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, Caltrans will not be required to obtain an incidental take permit under CESA for the proposed project.

OFFICE OF ADMINISTRATIVE LAW

REQUEST FOR INFORMATION

OVERVIEW

The Office of Administrative Law (OAL) invites any interested person to provide information that may assist us in contracting for the future publication of the Official California Code of Regulations (CCR). **We are seeking the broadest possible information concerning publication of the CCR (printed and online versions)**, as well as information concerning the publication of other states' administrative codes or other official documents. We welcome suggestions and comments that any person deems of relevance to the publication of the CCR or similar official documents. We invite the submission of proposals and/or contracts that relate to publishing or printing hardcopy official documents or developing, providing and maintaining online searchable reference material. We also wish to compile a list of potential contractors for publishing the CCR. Any person may request to be added to our mailing list for all future communications on this topic.

BACKGROUND/CURRENT CONTRACT

The Office of Administrative Law was created by the Legislature in 1979 to ensure that state agency regulations are authorized by statute and adopted pursuant to the Administrative Procedure Act. Each year, OAL reviews thousands of regulations proposed by state agencies. After a regulation is approved by OAL and filed with the Secretary of State (SOS), it is published in the California Code of Regulations.

The CCR currently consists of 28 Titles contained in 39 three-ring binders.¹ Each section of the CCR is followed by Authority and Reference citations and History Notes. OAL files paper copies of approved regulations with the Secretary of State almost daily, and the publisher updates the CCR on a weekly basis.

The current publisher is responsible for publication of hardcopy, CD-ROM and online versions of the CCR, including weekly updates.² Under the current contract, the publisher pays an annual license fee to OAL for the exclusive rights to publish the Official CCR. OAL does not pay the current contractor for its services. The current contract requires the publisher to provide free copies of the CCR to 58 county clerks and 100 depository libraries, and offsets a portion of the license fee for publishing the online CCR. The current contractor receives value from the contract by selling hardcopy and CD-ROM versions of the CCR (or selected portions) to attorneys, the regulated public, and state and local agencies, among others, as well as revenues from licensing all or part of the CCR to other publishers.

Under the current contract, the intellectual property rights in the CCR are owned by OAL on behalf of the State of California. The current contract permits the publisher to copyright a Master Index and any editorial enhancements prepared by the publisher.

PURPOSE/USE OF INFORMATION PROVIDED PURSUANT TO THIS REQUEST

The current contract to publish the CCR ends on December 31, 2005. **OAL intends to issue one or more Requests for Proposals in 2005 covering some or all of the functions involved in publishing the CCR, and expects to award a contract for future hardcopy and online publication of the CCR after conducting a competitive contracting process.**

OAL will not conduct any formal evaluation process for anything received in response to this Request For Information. Any person wishing to receive future communications from OAL about the CCR contract process must request to be added to the CCR Contract Mailing List.

CONTACT INFORMATION

We recommend that any response to this RFI state clearly that it relates to **OAL CCR RFI 3-05.01**. Information, comments, suggestions or questions in

response to this Request for Information, or requests to be added to the CCR Contract Mailing List, shall be submitted on or before April 30, 2005 to:

Linda C. Brown
Deputy Director
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225
EMAIL CCRcontract@oal.ca.gov

RULEMAKING PETITION DECISIONS

DEPARTMENT OF HEALTH SERVICES

March 17, 2005

Mr. Leroy D. Baca, Sheriff
County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, CA 91754-2169

Re: Petition to Amend Regulations Governing
Correctional Treatment Centers

Dear Mr. Baca:

The California Department of Health Services (the Department) has received your January 31, 2005, petition to amend the regulations governing correctional treatment centers (Cal. Code Regs., tit. 22, section 79777(d)(4)). You specifically requested that the Department amend subsection (d)(4) to read that the program administrator can be a "State or County civil service appointment as a correctional health care administrator" in an effort to provide the necessary flexibility to County facilities.

The Department has decided to grant your petition. In fact, the Department is considering other amendments to this category of health facility and plans to incorporate this change with that process in accordance with the Administrative Procedure Act.

If you have additional questions regarding the correctional treatment center regulations, please contact Mr. Robert Kennard, Chief of the State Facilities Unit, at (916) 552-8733.

Very truly yours,

Robert D. Tousignant
Deputy Director and
Chief Counsel

¹ On January 1, 2005, the CCR contained 22,744 pages.

² The California Regulatory Notice Register, in which state agencies publish official notice of their intent to propose regulations, is a separate document issued weekly by the Office of State Publishing.

cc: Charles Smith, Chief
Office of Regulations
Department of Health Services
M.S. 0015
P.O. Box 997413
Sacramento, CA 95899-7413

PROPOSITION 65

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE TO INTERESTED PARTIES

ANNOUNCEMENT OF DRAFT REPORT, PUBLIC WORKSHOP, AND PUBLIC COMMENT PERIOD

HEALTH ADVISORY: FISH CONSUMPTION GUIDELINES FOR TRINITY LAKE AND SELECTED WATER BODIES IN THE TRINITY RIVER WATERSHED (TRINITY COUNTY)

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) announces the availability of the draft report entitled "Health Advisory: Fish Consumption Guidelines for Trinity Lake and Selected Water Bodies in the Trinity River Watershed (Trinity County)." The report contains an evaluation of findings on mercury in fish from Trinity Lake (also known as Clair Engle Lake), the Trinity River, Lewiston Lake, Coffee Creek, Canyon Creek, Eastman Creek, Eastman Dredge Ponds, Carrville Pond, Crow Creek, Tamarack Creek, the New River, and the East Fork Trinity River and its tributaries, and provides health guidelines for consumption of fish from these water bodies. OEHHA is soliciting comments from interested parties on the draft report and advisory during a 30-day public comment period. OEHHA will also hold a public workshop to make a presentation, answer questions, and take comments on May 3rd, 2005, at 11:30 AM, at the Victorian Inn Conference Room, 1709 Main St., Weaverville. Comments may be submitted at any time until the close of the comment period.

Comments on the draft report may be submitted by phone, fax, or e-mail to Dr. Robert K. Brodberg. All comments must be received by 5:00 p.m. on May 9th, 2005. OEHHA will consider comments received by this time and revise the draft report and advisory as appropriate to issue a final report and advisory.

OEHHA is making the draft document available at the OEHHA Web site at <http://www.oehha.ca.gov>. A copy of the report is also available by calling (916) 327-7319.

If you would like to submit comments, receive further information on this announcement, or have questions, please contact Dr. Robert K. Brodberg using the information provided below.

Dr. Robert K. Brodberg
California Environmental Protection Agency
Office of Environmental Health
Hazard Assessment
Pesticide and Environmental Toxicology Section
P.O. Box 4010
Sacramento, California 95812-4010
Phone: (916) 323-4763
Fax: (916) 327-7320
e-mail: rbrodber@oehha.ca.gov

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES

WORKSHOP ON POTENTIAL REGULATORY ACTION EXEMPTING FROM THE PROPOSITION 65 WARNING REQUIREMENTS, EXPOSURES FROM CHEMICALS THAT FORM FROM NATURAL CONSTITUENTS IN FOOD DURING COOKING OR HEAT PROCESSING

On May 9, 2005 the Office of Environmental Health Hazard Assessment (OEHHA) will conduct a public workshop to explore a potential regulatory action exempting from the Safe Drinking Water and Toxic Enforcement Act of 1986¹ (hereafter Proposition 65 or the Act) warning requirements, exposures to listed chemicals that form from natural constituents in food during cooking or heat processing.

OEHHA has been designated by the Governor as the lead agency for Proposition 65², and as the lead agency has the authority to adopt and modify regulations "as necessary to conform with and implement" the Act "and to further its purposes."

¹ Health and Safety Code Section 25249.5 et seq.

² Health and Safety Code Section 25249.12

OEHHA has adopted and applied regulations on exposures to listed chemicals in foods (e.g. Title 22, Cal. Code of Regs, Sections 12713, 12501 and 12703(b)³) and a background on those regulations is included with this notice.

In 2002 Swedish scientists reported that acrylamide, a chemical listed under Proposition 65, was formed in food from natural constituents as a result of cooking or heat processing. This chemical is found in many foods that are commonly consumed in California and it may be impossible to reduce to levels that would not require a warning. Concerns have been expressed that providing Proposition 65 warnings on many common food products may cause some consumers to avoid foods that may be necessary for a balanced diet. Additionally, the issue of over-warning or "warning fatigue" has been raised as well as the potential for conflict with federal food labeling laws. Therefore, OEHHA is considering the adoption of a limited exception to the warning requirements of the Act for exposures to chemicals that are formed from natural constituents as a result of cooking or heat processing.

PROPOSED ACTION

OEHHA is considering the possibility of a rulemaking that would provide a limited exemption from the warning requirements of the Act, under specified circumstances, for exposures to listed chemicals that form in a food solely as a result of naturally occurring constituents in the food being cooked or heat processed. Such an exemption would be adopted as a separate regulation. Proposed regulatory language, for purposes of discussion only, is set out below. This language may change significantly in any subsequent rulemaking action.

New Section _____, Chemicals Formed From Natural Constituents in Foods

"For purposes of Health and Safety section 25249.6, an exposure does not occur if the person otherwise responsible can show that the chemical in question formed solely from constituents naturally present in food and as a result of the food being cooked or heat processed, and that the concentration of the chemical in question has been reduced to the lowest level currently feasible using good cooking and manufacturing processes."

OEHHA is soliciting input from the public concerning the positive and negative issues to be considered in such a rulemaking process. The public is invited to attend a public workshop to be held on Monday, May 9, 2005 at 10:00 a.m. in the Coastal Hearing Room at the California Environmental Protection Agency, 1001 I Street, Sacramento, California. The

workshop will begin at 10:00 a.m. and will end when all business is conducted or 5:00 p.m. In the alternative, any interested person may submit comments to:

Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: coshita@oehha.ca.gov. In order to be considered in the initial drafting process, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on Monday, May 9, 2005. In the event OEHHA proceeds with a rulemaking proposal, additional opportunities for public input will occur.

REGULATORY BACKGROUND FOR EXPOSURES TO PROPOSITION 65 CHEMICALS IN FOOD

The following summarizes the history of regulatory efforts that OEHHA and its predecessor agency has taken to address exposures to listed chemicals in foods. This information is being provided in order to help ensure that the discussion at the workshop is productive and that the participants are well informed about the history and context for the present proposal. Copies of all relevant documents referred to in this discussion are attached and are also available on the OEHHA website at www.oehha.ca.gov.

Since the adoption of the Safe Drinking Water and Toxic Enforcement Act of 1986, various stakeholders have requested that OEHHA or its predecessor, the Health and Welfare Agency, exempt certain types of exposures to listed chemicals, particularly those related to foods and drugs from the warning requirements of the Act. Following is a discussion of the various regulatory actions that have been taken in regard to chemical exposures from foods.

Former Section 12713⁴—Exposures to Food, Drugs, Cosmetics and Medical Devices

An emergency regulation adopted in 1988, Section 12713, that had been interpreted as providing an

³ All further references are to Title 22 of the California Code of Regulations, unless otherwise indicated

⁴ All references are to Title 22 of the California Code of Regulations, unless otherwise indicated

exemption from the warning requirements of the Act for all exposures from all food, drugs and cosmetics that complied with federal law, was repealed in 1993, following a trial court finding that the regulation was null and void.⁵ According to the Final Statement of Reasons, Section 12713 was repealed based on findings by the agency that the Act expressly applies to foods, food products, drugs, cosmetics and medical devices, and that other regulatory provisions superceded the regulation.⁶ Since that time, OEHHA has taken the position that such a blanket exemption from the warning requirements of the Act is beyond the scope of its authority. However, OEHHA's predecessor, the Health and Welfare Agency did develop regulations that provide more narrow exemptions for certain types of exposures to listed chemicals, or that allow for higher exposures in certain situations (Section 12501 and Section 12703(b) respectively).

Section 12501—Naturally Occurring Chemicals

When adopting Section 12501 in 1989, OEHHA stated that the regulation, which exempts exposures to “naturally occurring” chemicals from the warning requirements of the Act under certain circumstances, could not be expanded to include cooking because cooking is a “known human activity” that can result in the addition of listed chemicals to food.⁷ For example, the Final Statement of Reasons for Section 12501 states that:

“Several comments requested that ‘human activity’ exclude ‘customary methods of food processing’ because they are such an integral part of the food supply system that they are not discretionary activities. Since chemicals in food, which are caused by cooking, fermentation, or any other processing, are added to the food by human agency, they are the result of known human activity, and thus cannot be considered naturally occurring.”⁸

Section 12501 was patterned on federal food adulteration laws⁹ that regulate the presence of deleterious substances in food. These federal laws apply to chemicals that are “added” to foods as a result of human actions. The term “added” has been interpreted by federal courts to mean that a substance is added to a food if it is artificially introduced, or attributable in some degree to the acts of man.¹⁰

Section 12501 provides an exemption from the warning requirements of the Act for exposures to listed chemicals in foods that are “naturally occurring.” The term “naturally occurring” is defined in the regulation as follows:

“ . . . A chemical is ‘naturally occurring’ if it is a natural constituent of a food, or if it is present in the food solely as a result of absorption or accumulation of the chemical which is naturally present in the environment in which the food is raised, grown, or obtained; for example minerals present in the soil solely as a result of natural geologic processes, or toxins produced by the natural growth of fungi.”

The regulation goes on to require that even where a chemical can be considered “naturally occurring,” the level of the chemical in the food must be reduced to the lowest level currently feasible through the use of good agricultural or good manufacturing processes.

The regulation does not define the term “human activity” but states that it does not include sowing, planting, irrigation, or plowing or other mechanical preparation of soil for agricultural purposes; but does include the addition of chemicals to irrigation water supplied to soil or crops. According to the Final Statement of Reasons, these activities were exempted because they were not likely to result in the addition of harmful chemicals to the food.

Following the adoption of Section 12501, the regulation withstood a legal challenge in *Nicolle-Wagner v. Deukmejian*.¹¹ The plaintiff in that case argued that the regulatory action was invalid because Proposition 65 did not allow for any differentiation between chemicals that are added by human activity or are merely present naturally in the food, and the implementing agency had no authority to adopt a regulation that was in conflict with the purpose of the Act. The court in the *Nicolle-Wagner* case determined that the implementing agency had the limited authority to adopt regulations that are consistent, not in conflict with and reasonably necessary to effectuate the purpose of the statute and that this particular regulation was not in conflict with the purposes of the Act. The court focused on language in the Act that provides that “no person in the course of doing business shall knowingly and intentionally expose any individual” and interpreted the phrase to require some level of human activity that results in the chemical being added to the environment as required under the Act.

Section 12703(b)—Alternative Risk Levels

The other regulation that can be used to address exposures to listed chemicals in foods is Section 12703(b) which allows for the establishment of an

⁵ Settlement Agreement, *AFL-CIO et al. v. Deukmejian* (Sacramento Superior Court case no. 502541)

⁶ Final Statement of Reasons, repeal of Section 12713

⁷ Final Statement of Reasons and Letter dated February 11, 2003 to Michelle Corash, Morrison & Foerster

⁸ Final Statement of Reasons, Title 22, Cal. Code of Regs. Section 12501 at page 9

⁹ 21 USC Section 342(a) and 21 CFR Section 109.3

¹⁰ *United States v. Anderson Seafoods, Inc* (1980, 5th Circuit) 622 F.2d. 157 at page 160.

¹¹ *Bryan Nicolle-Wagner v. George Deukmejian* (1991) 230 Cal. App.

“alternative risk level” that may be higher than the standard where “sound considerations of public health” support such a level. An example relevant to foods is given in Section 12703(b)(1): “where chemicals in food are produced by cooking necessary to render the food palatable or to avoid microbiological contamination.” This provision does not provide an exemption from the warning requirements of the Act, but may be applied in such a way as to exempt exposures at or below the alternative risk level from the warning requirements of the Act based upon sound considerations of public health.

Many other Proposition 65 regulations can apply to exposures to chemicals that may be present in foods including the “safe harbor” warning provisions of Section 12601, No Significant Risk Levels in Section 12701, Levels of Exposure in Sections 12721 and 12821, No Observable Effects Levels in Section 12801, and the like. These regulations do not directly relate to the context for the proposed regulatory action, so they are not discussed here.

PRECEDENTIAL DECISION INDEX

AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS OF THE AGRICULTURAL LABOR RELATIONS BOARD AND RELATED COURT DECISIONS

PLEASE TAKE NOTICE that the Agricultural Labor Relations Board’s Index of Precedential Decisions (Case Digest), which includes supplements through Volume 30 (2004), is available for purchase by contacting:

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board
915 Capitol Mall, Third Floor
Sacramento, CA 95814
Phone: (916) 653-3741
Fax: (916) 653-8750
e-mail: jbarbosa@alrb.ca.gov

The Case Digest also may be viewed online at www.alrb.ca.gov.

This notice is published pursuant to California Government Code section 11425.60, subdivision (c).

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339; (916) 323-6225; FAX (916) 323-6826. Please request by OAL file number.

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW (Gov. Code Sec. 1349.3) OAL File No. 05-0207-01 S

DECISION OF DISAPPROVAL OF REGULATORY ACTION

In re:

AGENCY: SECRETARY OF STATE
REGULATORY ACTION:

Title 2, California Code of Regulations
OAL File No. 05-0207-01 S

ADOPT SECTIONS: 20800.1, 20800.2, 20800.3, 20800.4, 20800.5, 20800.6, 20800.7, 20800.8, 20800.9, 20801.1, 20801.2 and 20801.3; AMEND SECTIONS: 20800, 20801 and 20802

SUMMARY OF REGULATORY ACTION

This regulatory action deals with vendors who require approval by the Secretary of State before they can provide notary public education. The proposed regulations establish procedures for the following: application for and issuance of certificates of approval; issuance of proof of completion and warning letters; the list of approved vendors; notification of changes in vendor information and revised lesson plans; and termination or cancellation of certificates of approval.

The Secretary of State submitted this regulatory action to the Office of Administrative Law (“OAL”) on February 7, 2005. On March 22, 2005, OAL notified the Secretary of State that OAL had disapproved the regulations because they failed to comply with the Clarity and Consistency standards contained in Government Code section 11349.1.

Please contact me at (916) 323-6809 if you have any questions.

March 29, 2004

BARBARA ECKARD
Senior Staff Counsel

For: WILLIAM L. GAUSEWITZ
Director

Original: Cathy Mitchell, Acting Secretary of State
cc: Lisa B. Niegel

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Vapor Recovery Systems—ORVR Extension

In this regulatory action, the Air Resources Board amends its regulations pertaining to vapor recovery systems at gasoline dispensing facilities, including extending the onboard refueling vapor recovery (ORVR) compatibility deadlines for existing gasoline dispensing facilities.

Title 17
California Code of Regulations
AMEND: 94011
Filed 03/24/05
Effective 03/24/05
Agency Contact: Kirk C. Oliver (916) 322-6533

BOARD OF EQUALIZATION

Rules of Practice

This regulatory action clarifies and revises the requirements for a valid petition for reassessment filed by state assesses and private railroad companies, the notice of hearing, and the decision on the petition.

Title 18
California Code of Regulations
AMEND: 5041, 5073, 5076, 5082.2
Filed 03/30/05
Effective 04/29/05
Agency Contact:
Joann Richmond (916) 322-1931

BOARD OF PODIATRIC MEDICINE Fictitious Name Permits

This action implements Business and Professions Code section 2415 by specifying appropriate name designations for use by doctors of podiatric medicine who wish to practice under a fictitious name.

Title 16
California Code of Regulations
AMEND: 1399.688
Filed 03/28/05
Effective 04/27/05
Agency Contact:
Mischa Matsunami (916) 263-0315

COMMISSION ON TEACHER CREDENTIALING Committee of Credentials

This action updates existing provisions governing misconduct investigations of credential holders. The action implements statutory changes contained in SB 299 (Chap. 342, Stats. 2001) and the court's decision in *Cross v. COTC* (2003) 111 Cal. App. 4th 1001.

Title 5
California Code of Regulations
ADOPT: 80307 AMEND: 80300, 80303, 80310, 80412 REPEAL: 80307
Filed 03/24/05
Effective 04/23/05
Agency Contact: Kim Hunter (916) 324-5948

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Counselor Certification

This rulemaking action establishes a program to increase the qualifications of staff providing counseling services in alcohol and other drug (AOD) programs. The action establishes minimum requirements for approval of organizations authorized to issue certifications for AOD counselors, and establishes minimum requirements regarding training, work experience, testing, and a code of conduct for issuance of an AOD counselor certification by an approved organization. The action requires registration of all non-licensed, non-certified AOD counselors with a certifying organization by October 1, 2005 or within 6 months of hire, whichever is later and requires that 30% of AOD counselors must be licensed or certified by April 1, 2010. Registrants must complete certification requirements within five years, unless time is extended for specified reasons. The action also establishes continuing education requirements for certified counselors and for licensed professionals providing counseling services in AOD programs. It also provides for investigation of complaints for code of conduct violations, and for administrative review of

a denial, suspension, or revocation of a certificate, or the issuance of a certification to an individual whose previous certification or registration was revoked.

Title 9

California Code of Regulations

ADOPT: 13000, 13005, 13010, 13015, 13020, 13025, 13030, 13035, 13040, 13045, 13050, 13055, 13060, 13065, 13070, 13075 AMEND: 9846, 10125, 10564

Filed 03/25/05

Effective 04/01/05

Agency Contact: Mary Conway (916) 327-4742

DEPARTMENT OF CORPORATIONS

Guaranteed Loan Rules (Live Checks)

This is a nonsubstantive file referencing requirements in the statute, specifically Financial Code section 22342, regarding instant loan checks or live checks.

Title 10

California Code of Regulations

AMEND: 1556

Filed 03/25/05

Effective 04/24/05

Agency Contact: Kathy Womack (916) 322-3553

DEPARTMENT OF DEVELOPMENTAL SERVICES

Habilitation Transfer

This emergency regulatory action implements AB 1753 (Chapter 226, Statutes of 2003) which transfers administrative responsibility for the Habilitation Services Program (HSP) from the Department of Rehabilitation to the Department of Developmental Services. (Previous OAL file numbers 04-0712-01E; 04-1118-03EE)

Title 17

California Code of Regulations

ADOPT: 54351, 58800, 58811, 58812, AMEND: 54302, 54310, 54320, 54370

Filed 03/30/05

Effective 03/30/05

Agency Contact:

Andrea Fishback (805) 560-8149

DEPARTMENT OF HEALTH SERVICES

Estate Recovery Regulations

Existing regulations provide for the recovery of payments for health care premiums and services from the estates of deceased Medi-Cal beneficiaries and recipients of such decedent's property by distribution or survival. This emergency regulatory action replaces the existing regulations with more comprehensive provisions which more specifically direct the Department to claim against life estate interests as part of a decedent's estate. Pursuant to subdivision (a) of Welfare and Institutions Code section 14043.75, this

regulatory action is exempt from review by the Office of Administrative Law and is deemed an emergency necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Title 22

California Code of Regulations

ADOPT: 50960.2, 50960.4, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.36, 50961, 50965 AMEND: 50962, 50963, 50964 REPEAL: 50960, 50961

Filed 03/23/05

Effective 03/23/05

Agency Contact:

Lynette Cordell (916) 650-6827

DEPARTMENT OF HEALTH SERVICES

Clinical Psychologists' Scope of Practice

The Department proposes amendments to its regulations dealing with restrictions on the scope of practice by clinical psychologists in general acute care hospitals and acute psychiatric hospitals. These changes are proposed as changes without regulatory effect based on the ruling by the California Supreme Court in *California Association of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 270 Cal.Rptr. 796.

Title 22

California Code of Regulations

AMEND: 70577, 70717, 71203, 71517, 71545

Filed 03/24/05

Effective 03/24/05

Agency Contact:

Barbara S. Gallaway (916) 657-3197

DEPARTMENT OF JUSTICE

Definitions, Forms, and Deposits

This action is the Certificate of Compliance rulemaking making permanent the prior emergency readoption of the Division of Gambling Control's schedule of investigation and processing costs for various gambling, game or gaming licenses and approvals. The prior initial emergency and emergency readoption files were OAL file numbers 04-0609-01E and 04-1041-01EE, respectively.

Title 11

California Code of Regulations

ADOPT: 2037, 2038 AMEND: 2010, 2037, 2038, 2050

Filed 03/30/05

Effective 03/30/05

Agency Contact:

Terri Sue Canale (916) 263-0372

DEPARTMENT OF JUSTICE

Dangerous Weapons Regulations

This rulemaking action revises regulations on licenses and permits for manufacturing, possessing, or transporting machine guns, destructive devices, short-barreled shotguns and rifles, and assault weapons. The action revises license and permit fees, and adopts an inspection fee. The action also establishes more comprehensive recordkeeping requirements and clarifies a number of provisions. The adoption of subdivisions (r) and (s) of section 971 and amendments to subdivision (b) of section 975.2 have been withdrawn.

Title 11

California Code of Regulations

AMEND: 970, 970.1, 971., 972, 972.1, 972.2, 972.4, 972.5, 972.6, 972.7, 972.9, 973, 973.1, 974, 974.1, 975, 975.1, 975.2, 975.3, 975.4, 975.5, 975.6, 976, 976.1, 976.2, 976.3, 976.4 REPEAL: 975.1

Filed 03/30/05

Effective 03/30/05

Agency Contact: Mike Small (916) 227-0537

DEPARTMENT OF MOTOR VEHICLES

Employer Testing Program

This emergency regulatory action requires that third-party testers for commercial driver licenses must perform at least one test every 90 days or they will be required to take a refresher course. This action also raises the fee for the third-party test course.

Title 13

California Code of Regulations

AMEND: 25.15, 25.18, 25.19, 25.22

Filed 03/30/05

Effective 03/30/05

Agency Contact:

Bonnie DeWatney (916) 657-8954

FISH AND GAME COMMISSION

Revocation/Suspension of Privileges

This regulatory action permits the Commission to revoke or suspend a hunting or fishing license for a single conviction of specified violations.

Title 14

California Code of Regulations

ADOPT: 745.5 AMEND: 746

Filed 03/25/05

Effective 04/24/05

Agency Contact: Jon Snellstrom (916) 653-4899

FISH AND GAME COMMISSION

Commercial Squid Fishery

The regulatory action deals with Commercial Squid Fisheries. Please note that the Fish and Game Commission withdrew in writing subsections (i)(3), (q) and (r) of section 149.1 and reserved the right to resubmit those subsections on or before July 9, 2005.

Title 14

California Code of Regulations

ADOPT: 53.00, 53.01, 53.02, 53.03, 149.1, 149.3

AMEND: 149

Filed 03/28/05

Effective 03/28/05

Agency Contact: Sherrie Koell (916) 653-4899

OFFICE OF SPILL PREVENTION AND RESPONSE

Escort Tugs for San Diego Harbor

This action amends the tug escort requirements for the San Diego Harbor.

Title 14

California Code of Regulations

AMEND: 852, 852.2, 852.3

Filed 03/30/05

Effective 04/29/05

Agency Contact:

Joy D. Lavin-Jones (916) 327-0910

OFFICE OF SPILL PREVENTION AND RESPONSE

Nontank Vessel Contingency Plans

The proposed action eliminates from the rules applicable to oil spill prevention and response planning, all mention of maintaining a relationship with a non profit Maritime Association as one of the options for complying with planning, preparedness and response requirements.

Title 14

California Code of Regulations

AMEND: 825.03, 825.05, 826.01, 826.03, 829.04, 829.05, 827.02

Filed 03/30/05

Effective 03/30/05

Agency Contact:

Joy D. Lavin-Jones (916) 327-0910

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Hospital Charge Description Master Reporting

This regulatory action adopts the requirements for the reporting of hospital charges as required by the Payers' Bill of Rights of 2003.

Title 22

California Code of Regulations

ADOPT: 96000, 96005, 96010, 96015, 96020, 96025

Filed 03/23/05

Effective 04/22/05

Agency Contact:

Kenrick J. Kwong (916) 323-7681

**STATE WATER RESOURCES CONTROL BOARD
Underground Storage Tanks—Interstitial Liquid
Level Measurement**

In this emergency readoption regulatory action, the State Water Resources Control Board amends its underground storage tank regulations to add a definition of the term “Interstitial Liquid Level Measurement” Method (as used in Health and Safety Code section 25290.1) or “Hydrostatic Monitoring” Method.

Title 23

California Code of Regulations

AMEND: 2611

Filed 03/28/05

Effective 03/29/05

Agency Contact: Raed Mahdi (916) 341-5871

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN NOVEMBER 10, 2004
TO MARCH 30, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation’s titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

03/21/05 AMEND: 549.70, 549.71, 549.72, 549.74
03/02/05 AMEND: 1859.73.2, 1859.145.1
02/28/05 AMEND: 1859.2
02/28/05 AMEND: 1859.2
02/28/05 AMEND: 1859.71.3, 1859.78.5
02/24/05 AMEND: 211
02/23/05 ADOPT: 1859.90.1 AMEND: 1859.2
02/15/05 AMEND: 1859.81
02/03/05 AMEND: 1859.106
02/03/05 ADOPT: 1859.78.8 AMEND: 1859.2,
1859.60, 1859.61, 1859.78.6
01/31/05 AMEND: 1859.2, 1589.33, 1859.35,
1859.77.3, 1859.82, 1859.83
01/26/05 ADOPT: 20107
01/04/05 AMEND: 18703.4, 18730, 18940.2,
18942.1, 18943
01/03/05 ADOPT: Division 8, Chapter 108, Sec-
tion 59530.
12/31/04 ADOPT: 18229
12/31/04 AMEND: 18545
12/20/04 ADOPT: 1859.71, 1859.78.1 AMEND:
1859.2, 1859.73.2, 1859.79.2, 1859.82,
1859.83

12/16/04 ADOPT: 1859.51.1, 1859.70.2 AMEND:
1859.2, 1859.51, 1859.70, 1859.103,
12/06/04 AMEND: 1859.2, 1859.51
11/30/04 AMEND: Div. 8, Ch. 29, Sec. 50000
11/24/04 AMEND: 1866, 1866.1, 1866.2, 1866.4,
1866.4.1, 1866.4.2, 1866.4.3, 1866.5,
1866.5.1, 1866.7, 1866.13
11/22/04 AMEND: 58700
11/18/04 AMEND: 561, 561.1, 561.2, 561.4, 561.5,
561.6, 561.7, 561.8, 561.9, 561.10,
561.11, 561.12, 561.13, 561.14
11/10/04 ADOPT: 1859.163.1, 1859.163.2,
1859.163.3, 1859.164.2, 1859.167.1
AMEND: 1859.2, 1859.145, 1859.145.1,
189.160, 1859.161, 1859.162, 1859.163,
1859.164, 1859.164.1, 1859.165,
1859.166, 1859.167, 1859.168, 1859.171

Title 3

03/07/05 ADOPT: 1392.8.1(3) AMEND:
1392.8.1.(2)
03/01/05 ADOPT: 796, 796.1, 796.2, 796.3, 796.4,
796.5, 796.6, 796.7, 796.8, 796.9
AMEND: Article 8 heading REPEAL:
795.10, 795.13, 795.14, 795.16, 795.17,
795.19, 795.30, 795.32, 795.33, 795.50
02/28/05 AMEND: 3430(b)
02/24/05 AMEND: 1280.2
02/23/05 AMEND: 3423(b)
02/15/05 ADOPT: 4603(g)
02/02/05 AMEND: 3430(b)
01/21/05 AMEND: 3700 (b)(c)
01/21/05 ADOPT: 3700
01/14/05 AMEND: 3700(c)
01/13/05 AMEND: 3962(a)
12/20/04 REPEAL: 305, 306
11/29/04 AMEND: 3423(b)
11/17/04 AMEND: 1703.3
11/16/04 AMEND: Subchapter 1.1
11/10/04 AMEND: 3601(g)

Title 4

03/22/05 AMEND: 12250, 12270, 12271, 12272
02/28/05 AMEND: 2424
02/11/05 ADOPT: 7030, 7031, 7032, 7033, 7034,
7035, 7036, 7037, 7038, 7039, 7040,
7041, 7042, 7043, 7044, 7045, 7046,
7047, 7048, 7049, 7050
02/04/05 AMEND: 1371
01/28/05 ADOPT: 12270, 12271, 12272
12/23/04 ADOPT: 10163, 10164 AMEND: 10152,
10153, 10154, 10155, 10156, 10157,
10158, 10159, 10160, 10161, 10162
12/20/04 ADOPT: 12200, 12200.1, 12200.3,
12200.5, 12200.6, 12200.7, 12200.9,
12200.10A, 12200.10B, 12200.10C,
12200.11, 12200.13, 12200.14, 12200.15,

12200.16, 12200.17, 12200.18, 12200.20,
12200.21, 12201, 12202, 12203, 12203A,
12203.1, 12203.2, 12203.3, 12203.
12/16/04 ADOPT: 10300, 10301, 10302, 10303,
10304, 10305, 10306, 10307, 10308,
10309, 10310, 10311, 10312, 10313,
10314, 10315, 10316, 10317, 10318,
10319, 10320, 10321, 10322, 10323,
10324, 10325, 10326, 10327, 10328,
10329, 10330, 10331, 10332, 10333,
10334,
12/16/04 ADOPT: 144
11/29/04 AMEND: 1846.5
11/23/04 ADOPT: 2444 AMEND: 2241, 2242,
2243, 2245, 2250, 2270, 2271, 2272,
2300, 2401, 2422, 2423, 2424, 2425,
2426, 2441, 2442, 2443, 2505, 2507,
2511, 2512

Title 5

03/24/05 ADOPT: 80307 AMEND: 80300, 80303,
80310, 80412 REPEAL: 80307
03/21/05 AMEND: 19828.1
02/10/05 ADOPT: 19817.1, 19826.1, 19828.1,
19837 AMEND: 19814, 19814.1, 19817,
19826, 19828
02/09/05 REPEAL: 9540, 9541, 9542, 9543, 9544,
9545, 9546, 9547, 9548, 9549, 9550
01/31/05 AMEND: 80048.3, 80457, 80523.1 RE-
PEAL: 80413.1
01/19/05 ADOPT: 19814.1, 19832, 19833, 19834,
19835, 19836 REPEAL: 19814
01/10/05 ADOPT: 3088.1, 3088.2
12/08/04 ADOPT: 9517.1 AMEND: 9515, 9517
11/16/04 ADOPT: 80089.3, 80089.4
11/15/04 ADOPT: 6116, 6126 AMEND: 6100,
6115, 6125

Title 7

12/06/04 AMEND: 213, 218

Title 8

03/16/05 AMEND: 344.30
03/08/05 AMEND: 15220, 15220.1, 15220.3,
15220.4
03/07/05 AMEND: 5144
02/28/05 ADOPT: 9767.1, 9767.2, 9767.3, 9767.4,
9767.5, 9767.6, 9767.7, 9767.8, 9767.9,
9767.10, 9767.11, 9767.12, 9767.13,
9767.14
02/04/05 AMEND: 5146
01/26/05 AMEND: 3456
01/26/05 AMEND: 5144
01/24/05 AMEND: 3427
12/31/04 ADOPT: 9785.4, AMEND: 9725, 9726,
9727, 9785, 9785.2, 9785.3, 9805, 10150,
10152, 10156, 10158, 10160, 10163,
10165.5 REPEAL: 10151, 10154

12/31/04 ADOPT: 9768.1, 9768.2, 9768.3, 9768.4,
9768.5, 9768.6, 9768.7, 9768.8, 9768.9,
9768.10, 9768.11, 9768.12, 9768.13,
9768.14, 9768.15, 9768.16, 9768.17

12/30/04 AMEND: 3380(d)

12/27/04 ADOPT: 32032, 32033, 32034, 32035,
81000, 81005, 81010, 81020, 81030,
81040, 81050, 81055, 81060, 81065,
81070, 81075, 81080, 81090, 81100,
81105, 81110, 81115, 81120, 81125,
81130, 81135, 81140, 81145, 81150,
81155, 81160, 81165, 81170, 81175,
81180,

12/15/04 ADOPT: 9788.01, 9788.1, 9788.11,
9788.2, 9788.3, 9788.31, 9788.32,
9788.4, 9788.45, 9788.5, 9788.6, 9788.7,
9788.8, 9788.9, 9788.91

12/15/04 AMEND: 9789.11

12/09/04 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9,
9792.10, 9792.11 REPEAL: 9792.6

12/08/04 AMEND: 1602(a)

12/08/04 AMEND: 3210, 3212

12/07/04 AMEND: 3314

Title 9

03/25/05 ADOPT: 13000, 13005, 13010, 13015,
13020, 13025, 13030, 13035, 13040,
13045, 13050, 13055, 13060, 13065,
13070, 13075 AMEND: 9846, 10125,
10564

01/25/05 AMEND: 9525

12/06/04 ADOPT: 9805, 9868 AMEND: 9801,
9801.5, 9804, 9812, 9820, 9824, 9848,
9867, 9878

Title 10

03/25/05 AMEND: 1556

03/17/05 ADOPT: 2712 AMEND: 2835, 2840,
2840.1, 2851, 2930

03/02/05 AMEND: 2318.6, 2353.1, 2354

02/09/05 AMEND: 260.165

01/14/05 AMEND: 2498.6

01/07/05 ADOPT: 2699.6608 AMEND: 2699.100,
2699.200, 2699.201, 2699.205, 2699.209,
2699.400, 2699.401, 2699.6500,
2699.6600, 2699.6606, 2699.6607,
2699.6611, 2699.6613, 2699.6617,
2699.6619, 2699.6625, 2699.6631,
2699.6705, 2699.6715, 2699.6717,
2699.6725, 2699.

12/28/04 AMEND: 2698.30, 2698.31, 2698.32,
2698.33, 2698.34, 2698.35, 2698.36,
2698.37, 2698.38, 2698.39, 2698.40,
2698.41 REPEAL: 2698.42, 2698.43,
2698.44, 2698.45

12/27/04 AMEND: 2580.1, 2580.2, 2580.3,
2580.4, 2580.5, 2580.6, 2580.7, 2580.8,
2580.9

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